DOCUMENT RESUME

ED 350 533	CG 024 587

TITLE	Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies.
INSTITUTION	American Probation and Parole Association, Lexington, KY.
SPONS AGENCY	Department of Justice, Washington, D.C. Office of Juvenile Justice and Delinquency Prevention.
PUB DATE	Apr 92
CONTRACT	88-JN-CX-K001
NOTE	149p.
PUB TYPE	Reports - Descriptive (141)
EDRS PRICE	MF01/PC06 Plus Postage.
DESCRIPTORS	*Delinquency; *Delinquent Rehabilitation; *Drug Abuse; *Drug Use Testing; *Juvenile Justice

ABSTRACT

This document, intended as a resource manual, provides guidelines on drug testing. These topics are covered: (1) National Institute on Drug Abuse guidelines applicability; (2) introduction to legal issues, drug testing in juvenile probation and parole, and juvenile law; (3) mission of a juvenile parole agency; (4) purpose of testing; (5) drug testing policies and procedures, including administration and training; (6) authority to test and when to test; (7) selecting drug testing methodologies, including reliability and relationship with suppliers; (8) confirmation; (9) cutoff levels; (10) juvenile selection; (11) drug testing protocol; (12) instructions to juveniles; (13) agency collection sites; (14) chain of custody; (15) reporting results; (16) use of results; (17) confidentiality, including legal requirements and protocol for releasing results; (18) juvenile justice drug testing options; (19) contracting for drug testing services, including quality assurance and tampering; (20) establishing juvenile justice onsite instrument-based drug testing for initial drug testing; (21) establishing onsite noninstrument-based drug testing, including location, security, testifying, confrontation, and safety issues; (22) drug testing costs; and (23) management information systems. The appendix includes drug testing case law, forms, drug testing methodologies, conclusions drawn from a drug testing technologies survey, and approximate duration of detectability of selected drugs in urine. A glossary of terms is also included. (ABL)

****
*   Reproductions supplied by EDRS are the best that can be made   *
*   from the original document.   *
****

U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

ED350533

OJJDP

American Probation and Parole Association's

Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

CG024587

BEST COPY AVAILABLE

This document was prepared under grant number 88-JN-CX-K001, provided by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. The points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program Offices and Bureaus: the Bureau of Justice Statistics, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

Office of Juvenile Justice and Delinquency Prevention

OJJDP

American Probation and Parole Association's

Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies

April 1992

Dear Colleagues:

On behalf of the American Probation and Parole Association (APPA), we are pleased to present APPA's ***Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies.***

Testing juvenile probationers and parolees for drug use may well be the most rapidly evolving part of an already dynamic service system. Monthly, we learn new techniques and modalities that can serve as tools in the supervision process. Many of us have had to learn a new vocabulary, with terms such as chain of custody, confirmatory testing, and cutoff levels, just to be reasonably literate about the practices associated with drug testing. The need for help was clear.

In 1988, APPA began a research project to explore drug testing and develop guidelines to assist juvenile probation and parole administrators, managers, and field staff. Aided by the Office of Juvenile Justice and Delinquency Prevention, APPA canvassed field supervision agencies to gather information pertaining to drug testing policies and procedures and then developed guidelines for probation and parole.

We emphasize the term "guidelines." The project advisory board, staff, and consultants have sought to identify the best practices of the field for drug testing. Our goal is to help juvenile probation and parole departments develop and operate the most effective drug testing programs possible. The guidelines reflect the effort of APPA to provide a direction for field activities and support for progressive movement. Our intent is to help everyone prepare more effective, defensible, and credible operations.

APPA wishes you success in developing or upgrading your drug testing programs as an integral part of your supervision efforts.

Sincerely yours,

Harvey M. Goldstein
Chair, Project Advisory Board
APPA President-Elect

Donald G. Evans
APPA President

Nancy Lick
APPA Past President

TABLE OF CONTENTS

DRUG ADVISORY COMMITTEE AND STAFF ix

LIMITATION OF LIABILITY ix

ACKNOWLEDGMENTS xi

PREFACE xiii

HOW TO USE THIS DOCUMENT xv

EXECUTIVE SUMMARY xvii

NATIONAL INSTITUTE ON DRUG ABUSE GUIDELINES APPLICABILITY xxi

INTRODUCTION 1
- Legal Issues 2
- Drug Testing in the Juvenile Probation and Parole Setting 3
- History of Juvenile Law in the United States 3
- Juvenile Probation and Parole Law 5
- Conclusion 6

AGENCY MISSION 7

PURPOSE OF TESTING 9

DRUG TESTING POLICIES AND PROCEDURES 11
- Administration 11
- Training 12

AUTHORITY TO TEST 15
- Authorization 15
- When To Test 16

SELECTING DRUG TESTING METHODOLOGIES 17
- Methodology Selection 17
- Methodology Review 18
- Reliability and Accuracy 18
- Relationship With Suppliers 20
- Selection Process 20

CONFIRMATION 23
- Admissions 24
- Confirmation Methods 26

CUTOFF LEVELS 27

JUVENILE SELECTION 31
- Predisposition Investigation, Intake, or Agency Assessment Phase 31
- Condition of Probation or Parole 32
- Drug-Free Juveniles 32
- Exigent Circumstances 32
- Screening Special Needs Juveniles 33

DRUG TESTING PROTOCOL 35
- Scheduling Juveniles for Testing 35
- Notification 35
- Transporting Specimens 35
- Full and Partial Drug Screens 36

INSTRUCTIONS TO JUVENILES 37
- Medical Information 38

AGENCY COLLECTION SITES 41

CHAIN OF CUSTODY 43
- Collecting Specimens 44
- Chain of Custody Steps 46
- Collection Followup 47

REPORTING RESULTS 49

USE OF RESULTS 51

CONFIDENTIALITY 53
- Legal Requirements 53
- Protocol for Releasing Results 54

JUVENILE JUSTICE DRUG TESTING OPTIONS 55

CONTRACTING FOR DRUG TESTING SERVICES 57
- Laboratory Personnel 57
- Laboratory Analysis Procedures 58
- Quality Assurance and Quality Control 58
- Laboratory Security 59
- Tampering 60
- Initial and Confirmatory Capability at Same Site 60
- Evaluation of Performance Testing 61

ESTABLISHING JUVENILE JUSTICE ONSITE INSTRUMENT-BASED DRUG TESTING FOR INITIAL DRUG TESTING 63
- Initial Test (Screening Test) 63
- Drugs To Include in Testing Protocol 63
- Number of Tests per Specimen 64

Security 64
Location of Onsite Testing 64
Chain of Custody 64
Storage 65
Onsite Instrument-Based Testing Analysis Procedures 66
Quality Assurance 66
Reviewing Results 68
Court Challenges 68
Testifying 68
Documentation 69
Inspections 70
Protected Work Environment 70
Staffing for Onsite Instrument-Based Drug Testing 70
  A. Agency drug testing program coordinator 71
  B. Onsite drug testing manager 71
  C. Onsite instrument-based drug testing technician(s) 73
Certification 74

ESTABLISHING ONSITE NONINSTRUMENT-BASED DRUG TESTING 75

Anticipating the Effects of Noninstrument-Based Testing 75
Onsite Noninstrument-Based Test Methodology 75
Staffing Requirements 76
Training and Qualifications of Testing Personnel 76
Location 76
Security 77
Collection and Transportation 77
Chemical Storage 77
Testing Operations 78
Number of Tests per Specimen 78
Quality Assurance 78
Quality Control 78
Testifying 78
Confrontation 79
Safety Issues for Testing Personnel 79
Protected Work Environment 79
Documentation/Chain of Custody Requirements 80
Compliance With Other Testing Guidelines 81

DRUG TESTING COSTS 83

MANAGEMENT INFORMATION SYSTEMS 85

APPENDIX A: DRUG TESTING CASE LAW 87

I. Principles of Law for Leading Drug Testing and Related Cases In Probation and Parole (Arranged by Topics) 87
  1. Testing as a Condition of Probation and Parole 87
  2. Informing Offenders 88
  3. Reliability and Accuracy 88
  4. Confirmation of Positive Results 89

5. Chain of Custody Specimen 90
6. Court Testimony and Laboratory Reports 90
7. Confidentiality 91

II. Principles of Law for Leading Drug Testing and Related Cases In Probation and Parole (Arranged by Constitutional Issues) 91
1. Right Against Unreasonable Search and Seizure 91
2. Right to Due Process 91
3. Right to Confrontation and Cross-Examination 94
4. Right Against Self-Incrimination 95

III. Principles of Law for Leading Drug Testing and Related Cases In Probation and Parole (Arranged in Alphabetical Order) 95

IV. Drug Testing Case Abstracts: Facts and Holdings by Issue 99
1. Admissibility of Test Results 99
2. Chain of Custody 102
3. Duty to Preserve Specimens 103
4. Reliability/Confirmation of Test Results 104
5. Drug Testing as a Condition of Probation 107
6. Juvenile Drug Testing 108

APPENDIX B: FORMS 109
1. Instructions to Juvenile Offenders (Attachment 1) 111
2. Drug Testing Agreement (Attachment 2) 112
3. Request for Drug Test(s) (Attachment 3) 113
4. Substance/Medication Screen Record (Attachment 4) 114
5.Specimen Collection Checklist (Attachment 5) 115
6. Specimen Container Seal (Attachment 6) 116
7. Chain of Custody Form (Attachment 7) 117
8. Urinalysis Report (Attachment 8) 118
9. Positive Drug Test Statement (Attachment 9) 119
10. Authorization for Release of Drug Test and Result Information (Attachment 10) 120
11. Urinalysis Test Record (Attachment 11) 121
12. Probationer/Parolee Status Report (Attachment 12) 122
13. Agency Monthly Drug Testing Summary Log (Attachment 13) 123
14. Drug Testing Control Log (Attachment 14) 124

APPENDIX C: DRUG TESTING METHODOLOGIES 125

APPENDIX D: BJA/NIJ DRUG TESTING TECHNOLOGIES STUDY 127

APPENDIX E: APPROXIMATE DURATION OF DETECTABILITY OF SELECTED DRUGS IN URINE 129

GLOSSARY OF TERMS 131
Sources Used For Glossary 137

REFERENCES 139

SELECTED READINGS 141

DRUG ADVISORY COMMITTEE AND STAFF

Project Advisory Committee Members

Harvey M. Goldstein, Committee Chairman
Assistant Director for Probation
Administrative Office of the Courts
Trenton, New Jersey

Rolando V. del Carmen
Professor
College of Criminal Justice
Sam Houston State University
Huntsville, Texas

Melody Heaps
Executive Director
TASC, Inc.
Chicago, Illinois

Thomas E. Perras
Deputy Commissioner
Department of Corrections
Waterbury, Vermont

Barry Nidorf
Chief Probation Officer
Los Angeles County Probation
Downey, California

Roy B. Willett
Chief Judge
Twenty-Third Judicial Circuit of Virginia
Roanoke, Virginia

Annette Z. Henderson
Professor
Director, Community Programs
Georgia Department of Corrections
Atlanta, Georgia

Eric Wish
Research Fellow
National Institute of Justice
Washington, D.C.

Ernie Garcia
Juvenile Chief Probation Officer
Phoenix, Arizona

Rosalyn Williams
Probation Officer
Essex County Probation
East Orange, New Jersey

Project Staff

Timothy H. Matthews
Project Director
The Council of State Governments
Lexington, Kentucky

L. Edward Garner
Research Associate
The Council of State Governments
Lexington, Kentucky

Amy Hensel
Secretary
The Council of State Governments
Lexington, Kentucky

Sponsoring Agencies' Project Monitors

Jody Forman
Bureau of Justice Assistance
Washington, D.C.

Douglas Thomas
Office of Juvenile Justice and Delinquency Prevention
Washington, D.C.

LIMITATION OF LIABILITY

These drug testing guidelines have been developed by the American Probation and Parole Association and are not the individual act of any member, individual, or legal entity of or associated with the American Probation and Parole Association. These guidelines should not be construed so as to create any personal liability on the part of any member, individual, or legal entity of or associated with the American Probation and Parole Association.

ACKNOWLEDGMENTS

Numerous people contributed their knowledge, expertise, and time to research and develop these guidelines. The American Probation and Parole Association (APPA) gratefully acknowledges the professional contributions and support of the following advisory committee members who generously gave their time to this effort: Harvey M. Goldstein (Chairman), Rolando V. del Carmen, Melody Heaps, Thomas E. Perras, Barry Nidorf, Judge Roy B. Willett, Annette Z. Henderson, Eric Wish, Ernie Garcia, and Rosalyn Williams.

Special thanks are extended to Rolando del Carmen, whose legal research served as the foundation for this project. Most of the guidelines in the Authority to Test, Instructions to Juveniles, and Confidentiality chapters were written by Professor del Carmen, who also provided the excellent compilations of case law included in the appendix of this document.

Special thanks also go to Annette Z. Henderson, who volunteered a tremendous amount of time drafting, reviewing, and revising key sections of the guidelines. As the Director of Community Programs for the Georgia Department of Corrections, Probation Division, Ms. Henderson's contributions were invaluable.

The APPA staff, provided by the Council of State Governments, should also be credited. Specifically, Project Director Tim Matthews provided the leadership and support essential for the production of a quality document. Edward Garner devoted 16 months to studying a myriad of drug testing documents, reviewing agencies' policies and procedures, and discussing issues with administrators and line staff across the United States. He drafted most of the guidelines and collaborated with the advisory committee members and staff to produce this final document. Also, Amy Hensel deserves credit for typing and editing the manuscript.

Specifically prepared for juvenile probation and parole agencies, these guidelines will complement the *American Probation and Parole Association's Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies* published with BJA's support in July 1991. These guidelines would not have been possible without the funding support provided by the Bureau of Justice Assistance (BJA) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Their commitment to assist State and local community corrections agencies in developing successful and responsible drug testing programs will no doubt lead to more efficient and effective drug testing operations. In particular, Jody Forman of BJA and Doug Thomas of OJJDP maintained a high degree of interest and involvement throughout the project period and provided timely and critical information for the development of the guidelines. Also deserving special recognition is Karen McFadden, who initiated the development of these guidelines and promulgated drug testing practices that are consistent with the missions of criminal justice agencies.

We especially wish to thank probation and parole agency directors and office supervisors from Canada and the United States who contributed drug testing materials from their policy manuals. Without their contributions, the production of the drug testing guidelines would have been extremely difficult.

Finally, APPA expresses its appreciation to the many dedicated probation and parole professionals who generously contributed their knowledge and expertise in the development of these guidelines.

PREFACE

These drug testing guidelines have been developed at a point in history when our Nation is engulfed in a struggle against illegal drug use. The magnitude of the problem extends beyond the control of the juvenile justice system and strikes at the core of our society. The pervasive influence of drug use has touched every level of society, from working men and women in factories to the executive officers of corporations and government agencies. Private and public sector organizations are addressing the problems associated with drugs by designing programs that will ensure a drug-free workplace.

The juvenile justice system was struggling with the problems associated with drug use in the juvenile population long before the problem received the media attention it is getting today. Juvenile probation and parole agencies in every State have been forced to recognize the abilities drug-using juveniles have in disguising drug use from agency personnel. Because juveniles are in a critical developmental period of life, drug use can have a negative impact on their future. Therefore, it is particularly important that probation and parole officers become skilled in detecting drug use by juvenile offenders.

The American Probation and Parole Association (APPA) has developed drug testing guidelines that will assist agencies across the country in developing judicially acceptable programs that will provide the information needed to confirm or disprove drug use among juveniles. Furthermore, drug testing policies and procedures developed according to these guidelines can assist agencies in withstanding legal challenges to drug test results. This can be accomplished by developing the rigorous chain of custody procedures outlined in the guidelines and by working closely with the courts in developing the guidelines prior to the implementation of a drug testing program. The development of rigorous collection, identification, and chain of custody procedures is absolutely essential because an agency determined to establish a successful drug testing program must win court challenges. Any loss in the courts could not only damage the credibility of the program and the agency, but could also lead to further lengthy and costly litigation.

These guidelines represent an amalgamation of the best drug testing practices currently conducted by probation and parole agencies in the United States. Considerable research and analysis, based on the drug testing policies and procedures from more than 125 probation and parole agencies across the Nation, have resulted in these guidelines. They have been reviewed by an advisory committee composed of probation and parole practitioners, legal consultants, academicians knowledgeable about drug testing, manufacturers of drug testing equipment, drug testing laboratory personnel, and selected members of APPA's board of directors.

The use of the term "drug testing" in this document refers to urinalysis. This is because urinalysis offers, at the present time, the most inexpensive and least intrusive method for identifying illegal drug use; it is considered the technique of choice in the field of corrections. Other methods of analysis are available, notably blood, hair, and saliva testing, and voice recognition. For reasons of cost or accuracy, these methods are not widely used at this time. Furthermore, alternatives to urinalysis will require additional scientific validation because not all drugs of interest can be detected in hair or saliva. Passive exposure remains an issue for hair analysis, illustrating that these measurement techniques and collection practices need to be validated and standardized.

Drug testing technology is a rapidly evolving industry. Although these guidelines advocate the use of urinalysis, it is recognized that this may not be the method of choice in 3 years or less. Hair and saliva analysis, two technically reliable techniques that are currently available, may become the preferred alternatives in the very near future.

Blood specimens have been analyzed for decades to identify the existence of illicit drugs in an individual's body. The major weaknesses of this method are that blood analysis is complicated and more personally invasive than collecting urine specimens. Blood analysis is also costly and requires skilled laboratory personnel and sophisticated equipment.

Depending on the length of the hair available, hair radioimmunoassay (RIAH) technology has been used successfully to determine illegal drug use that ranges from months to years. RIAH is a process in which small amounts of radioactive particles are used in analyzing a hair sample. The noninvasive attribute of hair sampling is offset by its cost and the lack of any kind of standard or precedent. These tests may be influenced by passive participation (for example, smoke residue from being in a room where marijuana is being smoked) or contaminants from the air.

Saliva testing may be the technology of the future for monitoring drug use. Although it is not any more accurate than urinalysis, it is very easy to collect. Currently, the major drawback of this method is that it can detect drug use for only a few hours after consumption.

Additional technologies under development, notably voice recognition, may have some potential in the future for identifying drug use.

The self-reporting of drug use by the offender often proves unreliable due to underreporting or denial; however, self-reporting remains an option for any drug testing program.

The implementation of a drug testing program should be considered only after thoroughly analyzing the program issues described in these guidelines. A careful study will reveal how and why an agency should proceed in developing policies and procedures that will maximize positive program outcomes and will also minimize negative publicity and the prospects of court challenges.

HOW TO USE THIS DOCUMENT

This document is organized so that agency administrators can easily find the information they need. It is not necessary to read the entire document to benefit from its contents; the document is intended as a resource manual. Some sections are more policy-specific, whereas others are more technical in nature. There is significance in the document's order of sections. Sections placed near the beginning of the document should be read first because they are extremely important or because they need to be regarded as part of a sequence of considerations.

The executive summary highlights the principal focus and the main conclusions for each major section of the document. The sections within the summary appear in exactly the same order as they do in the document. Reading this summary will provide a basic understanding of what is included in each section and will allow the reader to determine whether it is necessary to read certain sections or merely to be cognizant of the material in these sections.

The table of contents has been annotated so that every subtopic is referenced as it appears in the sections of the text; thus, the reader can easily grasp the contents of the guidelines. The guidelines in each section are arranged by order of significance or by sequence of actions to be performed.

A few of the guidelines are by nature self-explanatory, but the majority require explanations. For these, the commentaries immediately following provide details that cannot be included in the guidelines or easily understood from reading them. Often, the commentary involves the reasoning for a given guideline's inclusion or explains how it might be implemented.

Each section is numbered consecutively starting with the number 1, as is each individual guideline. For example, the first guideline in the first section is number 1.1., the first guideline in the second section is number 2.1., and the second guideline in the sixth section is number 6.2.

The appendix is composed of three parts: case law review and abstracts, forms, and drug testing methodologies. The case law is alphabetically arranged in several different formats to allow for easy access to particular cases, constitutional issues, or topics. Case abstracts provide more detail than the others, but all are properly referenced.

The section on forms is presented to give agencies some examples of what is currently used. The sample forms may be used as guides in developing forms for drug testing programs, or they may be reproduced if they are appropriate to a particular agency's needs.

EXECUTIVE SUMMARY

The drug testing guidelines have been developed expressly for juvenile probation and parole drug testing programs. They are based, in part, on the policies and procedures provided by more than 125 State and local probation and parole agencies from 46 States that conduct drug testing. The drug testing guidelines are a composite of the best practices available for agencies, as well as a guide to developing a new program or upgrading an existing program.

Every effort has been made to conduct a comprehensive and thorough review of the existing literature during the course of this project. An analysis of this literature identified sound drug testing policy and procedural operations currently practiced by juvenile probation and parole agencies across the United States.

Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies identifies the major components that should comprise every juvenile probation and parole drug testing policy and procedure operations manual. The components of this system are summarized below.

Agency Mission

An agency developing or upgrading a juvenile drug testing program should make certain that the goals and objectives being developed or upgraded are consistent with and supportive of the probation or parole agency's mission. Program developers should determine the intent of legislative, judicial, or parole boards, and administrative authorizations for drug testing.

Purpose of Testing

A drug testing program should be implemented only after the need has been established. Documentation of the nature and extent of drug use within the jurisdiction will substantiate the need for drug testing. A plan outlining the goals and objectives of the proposed program should be prepared and detail how the program will help alleviate the problem and produce an acceptable outcome within a specified period of time.

Drug Testing Policies and Procedures

A drug testing program for juvenile probation and parole agencies should have a succinctly written statement of the formal policy goals and objectives. Legislative statutes, judicial orders, and policy directives originating from within the agency usually supply the impetus for developing program policy.

Written policy will help formalize drug testing goals and objectives while providing the general framework for implementing policy. It will ensure program direction, understanding, and unity of purpose. Written policy will promote consistency and continuity during program implementation and periods of personnel changes.

Written drug testing policies and procedures will assist the parent government agency in embracing the long-term goals and objectives of the program. Agency policymakers should incorporate mechanisms that will allow for policy revision and the objective and neutral evaluation of policy effectiveness by outside consultants.

Authority To Test

In most jurisdictions the authorization for drug testing will be found in State statutes, judicial or parole board orders, or administrative decrees. Agencies conducting drug testing should acknowledge the legal mandates for such authorization in their policies and procedures. Ideally, a program should contain three legal authorizations:

- Mandated by State statute.
- Ordered by the juvenile court or parole board as a specific condition of probation or parole.

- Written as administrative policies, which carry the weight of law.

These kinds of legal authorizations will reduce the probability of a successful court challenge based on the authority to test.

Selecting Drug Testing Methodologies

Once an agency has determined its authority to test and the purpose of testing, it should identify and prioritize its needs. The agency should then conduct an indepth study of the existing technology to evaluate which methodologies will best allow the drug testing program to meet these needs.

The selection of methodologies should be made by using a rating system based on some form of objective measurement. The lowest bid may not always be the most judicious long-term selection. By using a system of measurement, the agency will be able to track and study the performance of the methodologies over time. Keeping these types of records will help justify whatever selection is finally made.

Confirmation

A clinically approved confirmation is a second test by an alternate chemical method. This test is carried out on presumptive positives from initial screens to positively identify a drug or metabolite. An agency may use written admissions of drug use instead of the second alternate chemical method and other testing protocols. The basic question regarding the issue of confirmation is whether to confirm or not, and if so, under what conditions. If testing is to be conducted only to make confrontations, then the initial testing methodology should be sufficient. However, if testing is to be conducted as part of a scheme of progressive sanctions that lead to revocation proceedings, then a more thorough approach to confirmations should be considered.

Several options are available to agencies that need to confirm initial results. The requirements within juvenile probation and parole jurisdictions vary from State to State. Some juvenile courts or parole boards will require confirmation while others will not. If confirmation is required, then the agency will have to determine if the results are worth the costs.

These guidelines recommend that agencies attempt to obtain verbal and written drug use admissions from juveniles during the confrontations following each positive test. Confirmation tests should be done only if an officer is unable to obtain an admission of drug use from the juvenile. A juvenile who does not admit to drug use after being informed of testing positive should be allowed to challenge the test results within 30 days. If the juvenile does not challenge within 30 days, the positive test result should stand as presumptive of use. A confirmation test should be conducted by any qualified laboratory approved by the agency.

Selection of Juveniles for Testing

Every agency should use specific procedures and criteria when selecting juveniles for drug testing. Information provided by assessment instruments will assist juvenile judges and parole boards in determining who should be tested.

Drug Testing Protocol

Protocol relates to specimen collection, scheduling, and notification of results. Specimen collection should focus on site preparation and the verification of specimen integrity at the collection site.

Instructions to Juveniles

Juveniles selected for testing should be furnished with appropriate information instructing them how to comply with the drug testing program rules. This information should be supplied during an interview with the juvenile's officer and through a drug testing handbook containing the necessary information.

The juvenile should be furnished information that states the consequences of a refusal to cooperate or a positive test result, as well as the requirements concerning the juvenile's medical history.

Agency Collection Sites

Each agency should designate a specific collection site to ensure the integrity of the entire specimen collection process. Strict regulations should govern who has access to this area.

Chain of Custody

Rigorous procedures for chain of custody should be implemented as part of an agency drug testing program. Records should document each individual who has handled each specimen from the time it was provided through the time when test results are introduced as evidence into court, and ending with disposition of the specimen. Each specimen should be provided under direct and continuous observation to ensure specimen integrity.

Reporting of Results

The agency should designate which agency official will receive the drug test results from the laboratory or onsite facility, should develop stringent controls over how drug testing results will be transmitted within the agency, and should determine which agency personnel shall receive them.

Standard turnaround time should be 72 hours or less (preferably 48 hours) from the time the specimen reaches the laboratory until the test results are received by the agency submitting the specimen. A certified copy of the original chain of custody form for all confirmed positive specimens should be signed by the laboratory director or certifying official and sent to the office submitting the urine specimen.

Use of Results

For any program to successfully deter drug use, released juveniles must be held accountable for any probation or parole violations. Juvenile probation and parole agencies, courts, and parole boards should not tolerate drug use during community supervision. Unscheduled drug testing should be established with more intensive sanctions imposed when drug use continues.

A juvenile who tests positive should be confronted with test results within 72 hours by the agency obtaining the results, and the period for confrontation should never exceed 7 days.

An admission of drug use may be used as a confirmation. There may be certain judicial districts where a signed admission will not be sufficient for court proceedings. Judicial personnel should explore the legality of admission statements and their admissibility in court prior to program implementation.

Confidentiality

Confidentiality is governed by rules that vary from State to State. There are also Federal and State laws that may govern disclosure and nondisclosure, which may or may not apply to probation and parole. There is not yet any case law addressing the issue of to whom drug test results can be disclosed.

Nevertheless, the agency should determine what governs confidentiality and make certain that the drug testing policies and procedures adhere to disclosure laws. Strict adherence to confidentiality regulations should be maintained. If disclosure laws do not exist, the agency should draft its own policy.

Contracting for Drug Testing Services

Agencies electing to contract for laboratory services should make the best possible selection based on agency needs. Each agency should develop criteria prior to entering into a contractual arrangement with an outside laboratory. The criteria should include the selection of laboratory personnel, the type of analysis procedures, quality assurance and control, procedures for reporting and reviewing results, initial and confirmatory testing capability, the ability to provide expert witness testimony if needed, courier services, and the specific classes of drugs the laboratory tests.

Establishing Onsite Instrument-Based Drug Testing

Most drug screening for the detection of drugs in bodily fluids is conducted by an analytical methodology known as immunoassay, of which there are three types: radioimmunoassay (RIA), enzyme immunoassay (EIA), and fluorescence polarization immunoassay (FPIA). The most frequent screening method used by probation and parole agencies is EIA, which is based on the principle of competition between labeled and unlabeled antigen (drug) for binding sites on a specific antibody. Antibodies are protein substances with sites on their surfaces to which specific drugs or drug metabolites will bind. The Abbott ADx and Syva ETS are product examples of immunoassay methodologies that are instrument-based.

There are many similarities between the criteria for establishing onsite instrument-based testing and contracting for drug testing services. Onsite instrument-based testing, however, will be almost exclusively initial testing. Equipment is now on the market in a variety of methodologies that will allow agencies to train personnel to conduct the tests. The major concern for onsite instrument--based testing is to produce results that are reliable, accurate, valid, and defensible in legal proceedings.

Establishing Onsite Noninstrument-Based Drug Testing

Noninstrument-based drug testing refers to the use of any portable immunoassay testing capability (for example, Roche Diagnostic's On-Track or Environmental Diagnostic's EZ Screen) that is simple, accurate, cost-effective, and does not require onsite instrument analysis. A noninstrument test may be used any place inside or outside a juvenile probation or parole office or drug testing facility. Several issues need to be considered when conducting defensible noninstrument--based drug testing.

Drug Testing Costs

There are a number of critical elements that have cost implications that agency planners should consider when developing a drug testing program. Options that are both cost-effective and responsive to the agency's drug testing goals and objectives should also be considered.

The decision to conduct onsite drug testing or to contract with an outside laboratory is perhaps the major factor affecting program costs. It is impossible to recommend a direction that is applicable to every jurisdiction. There are considerations germane to most agencies that can be used to project program costs. These considerations should be used in conjunction with the agency drug testing goals and objectives. The overriding concern in considering which testing approach to use should be that the reliability and accuracy of the test results must never be in question.

Management Information Systems

Agencies should develop an organized information retrieval and review system that complements general research capabilities. Information produced by electronic systems, coupled with a research capacity, will greatly strengthen any drug testing program. A system that provides interpretations of the data within the program report will help to insure the survival of a drug testing program.

Agencies should regularly monitor and evaluate the utility and effectiveness of their drug testing program. Mechanisms should be established so that agency officials may conduct performance measures and audit recording practices whenever test results are challenged.

An agency should consider a system capable of delivering two basic kinds of information:

- Standard information, which consists of the data needed for management control.
- Information needed to generate reports for agency directors, researchers, and legislators.

One of the most important steps a probation and parole agency can take to improve its drug testing program and make it more cost-effective is to keep detailed statistical data on positive rates and corresponding drug use trends and then redirect its drug testing based on this data. Many probation and parole programs continue to test for specific drugs long after they have ceased to be a substance abuse problem. Many test for specific drugs that are not substance abuse problems in their area.

Conclusion

Each jurisdiction will have unique conditions that will require selecting or modifying the guidelines to its needs. The guidelines are prescriptive, not binding, and are to be used by juvenile probation and parole agencies as appropriate. They are not standards; however, the guidelines do represent goals for agencies to continually strive to achieve and maintain.

NATIONAL INSTITUTE ON DRUG ABUSE GUIDELINES APPLICABILITY

In April 1988, the National Institute on Drug Abuse (NIDA) established guidelines for Federal Workplace Testing Programs. These guidelines specifically stated that they did *not* apply to drug testing in the criminal justice setting. Therefore, it became necessary for guidelines to be established that specifically applied to criminal justice testing for probation and parole agencies. There is a distinct difference between an employee workplace testing program and a criminal justice testing program. For agencies that become involved in both programs, separation of program policies and procedures must be maintained to achieve the testing purposes and to assure the credibility of each program.

The current exemption of criminal justice drug testing programs from the NIDA guidelines should be maintained. However, many of the specific provisions of the NIDA guidelines represent the best drug testing practices regardless of the type of testing program. The APPA Advisory Committee thoroughly reviewed the NIDA guidelines to determine which guidelines were applicable to a probation and parole drug testing program and has incorporated those guidelines into this document.

There are more similarities than differences between the two sets of guidelines; however, the differences are significant in the following areas:

- Probation and parole agencies should not be limited to testing only for the five drug classes specified by NIDA: cocaine, opiates, amphetamines, cannabinoids, and phencyclidine (PCP).
- Drug test results in probation and parole programs need not be verified by a licensed physician or medical review officer.
- Certain drugs, for which probation and parole agencies may need to test, cannot be screened using an immunoassay testing methodology. Therefore, another initial screening methodology may be used only if an immunoassay testing methodology does not exist for a particular drug class.
- Confirmation requirements, cutoff levels, specimen collection procedures, and onsite drug testing are the other main areas where the APPA guidelines have been specifically developed for the juvenile justice drug testing program and differ from the NIDA guidelines.

To assure full reliability and accuracy of probation or parole drug testing programs, APPA reserves the right to change these guidelines to reflect advancements in methodology.

INTRODUCTION

Crime associated with drug use and drug trafficking has increased significantly in our society. Most research now indicates a direct correlation between drug use and criminal behavior. Juveniles commit more crimes during drug-using episodes, particularly when they are addicted to expensive dependence-producing drugs like cocaine and heroin. During periods of decreased drug use, juvenile commitment of crime also decreases. Illicit drug use, in and of itself, is a criminal act and needs to be intensely monitored if we are to preserve the public order.

The abuse of legal and illegal drugs has permeated every level of society and is indicative of a general societal problem. The effects of this societal drug problem upon juvenile probation and parole agencies are overwhelming. Many agencies, strapped for resources, are unable to efficiently protect the community and rehabilitate juvenile delinquents.

Studies of juvenile offenders have consistently shown that a relatively small number of juveniles is responsible for the majority of delinquent acts. Many of these repeat offenders may be dissuaded from criminal careers if their drug abuse can be effectively monitored and controlled while on probation or parole.

As set forth in the Federal Juvenile Justice and Delinquency Prevention Act of 1974, the juvenile justice system is guided by the principle that the best disposition of a juvenile offender is the one that uses the least coercive means to accomplish legal objectives. Probation and parole are particularly appropriate for many juvenile offenders who clearly need rehabilitation or supervision but who do not need to be subjected to the full coercive power of the court. The financial resources available to handle the growing number of juvenile offenders are limited; therefore, probation and parole present a more cost-efficient allocation of resources.

Because juveniles are in a critical developmental period of their lives, drug use can have a negative impact on their futures. Therefore, it is particularly important for juvenile probation and parole officers to become skilled in detecting drug use by juvenile offenders.

Studies have indicated that adolescent drug abusers have different characteristics than adults who abuse the same drugs. Adolescent drug abusers have less involvement with opiates and have shorter periods of abuse. However, they tend to be more involved with alcohol, marijuana, and multiple drug use than adults.

Significantly, they also tend to have a higher incidence of family deviance and a history of psychological treatment. Family, social, and psychological problems tend to precede their drug use. In summary, their patterns of drug use and their treatment needs differ in kind and in degree from those of adult drug users (Friedman and Beschner 1987).

The modern principles of juvenile justice call for youthful offenders to be punished and held accountable for their criminal behavior, while strongly emphasizing rehabilitation. Although punishment and accountability may be of increasing philosophical importance, the principal object of rehabilitative efforts is to socialize the offender and to prevent future criminal behavior (Springer 1987).

When making screening decisions and recommendations, and planning intervention strategies, juvenile probation and parole agencies pay close attention to the type of criminal activity rather than what the youthful offender is like. However, counseling remains a major "stock-in-trade" of the juvenile probation or parole officer. Ideally, the officer establishes a relationship with the youth and serves as a model during this critical developmental period (Roberts 1989).

Many juvenile probation and parole agencies are attempting innovative responses to the drug abuse problem by instituting drug testing programs. There are several purposes for conducting drug testing. Testing can be used to identify drug use, assist in the daily management of juveniles during treatment, aid in detection and intervention, and provide a history of drug abstinence or use. When juveniles are tested for drug use prior to release into the community, the juvenile court or parole board may intervene by employing drug testing as a condition of release.

In many cases, juvenile court judges and parole boards use drug test results to set the conditions of community release. Where appropriate, conditions typically include counseling, treatment, and the use of drug testing to detect and deter continued drug use. With the availability of drug testing, judges are more likely to release drug-using juveniles to the community and continue to monitor their drug use, thereby reducing criminal risk.

There are other benefits to developing or extending an agency's drug testing capability. Juveniles are not prone to injecting hard drugs, so detection of soft drug usage accompanied by treatment and counseling could prevent hard drug usage. Intervention at an early age among this group could have a positive effect by directing juveniles away from a lifestyle of drug abuse and crime which continues into adulthood. Drug testing may also provide both juvenile justice and health professionals with advance warnings of approaching drug epidemics and the changing patterns of drug availability.

Some juveniles will remain drug free only for the duration of their probation or parole period. Others will experience some relapse during the drug screening period; this is to be expected. When used as a component of the treatment process, drug screening should help to identify relapses and assist juveniles in abstaining from drug use for longer periods of time. The hope is to expose these individuals to an alternative lifestyle that will motivate them to become productive citizens rather than maintain a drug-using lifestyle supported by crime. A drug testing program will enable personnel to determine who will comply with the conditions of probation or parole. With the use of scientifically reliable drug tests, agencies and juvenile courts may initiate appropriate sanctions for continued drug use by juveniles.

The magnitude of the drug problem has necessitated innovative methods to detect the actual substances being abused. State-of-the-art technologies are available for use as diagnostic and therapeutic instruments. Drug testing technology is used by juvenile justice agencies as a diagnostic instrument to accurately and reliably detect the presence of illegal drugs in the juvenile's system. If this capability is onsite, results can be received within a very short time. A court order for an immediate test could produce accurate results within minutes. This capacity allows the agency to make accurate determinations of drug use very quickly. It enables the agency to inform the juvenile court and parole board of violations, as well as to confront juveniles more expeditiously.

Drug testing is therapeutic since it can detect and confirm drug use, thereby breaking through the denial period more quickly. Often it will lead to an admission of drug use by a juvenile. The admission of drug use coupled with an accurate summary of the extent of drug usage will assist the juvenile judge or parole board in setting the release conditions, including referrals to treatment programs. This information will also help the probation officer develop a case management plan directed toward rehabilitation.

Rehabilitation of drug-abusing juveniles is facilitated by sobriety, a necessary condition for successful treatment. The juvenile justice setting can induce sobriety by using drug testing. Drug testing is a deterrent to drug use because positive test results can be presented to the juvenile court for consideration before sentencing. This information can be used in conjunction with a system of graduated sanctions. Assistance and services directed toward holding the juvenile accountable are possibly the best guarantees against future criminal activity.

Finally, drug testing is not a panacea for resolving drug problems for any jurisdiction. Drug testing is only a tool which should be used to further the mission of the juvenile justice system.

Legal Issues. Legal issues encompass every aspect of drug testing programs. Probationers and parolees have challenged drug testing procedures in courts on various legal and constitutional grounds; allegations include violations of the right against unreasonable search and seizure, the right to due process, the right to confrontation and cross-examination, and the right against self-incrimination.

While these legal challenges have generally been unsuccessful, it is necessary to determine what practices and procedures are legally defensible. Many of the guidelines in this document are aimed at providing protection in case legal challenges are raised against agencies that conduct drug testing. The guidelines are based on statutes or drug testing case laws. The guidelines are generic, meaning that they may be preempted by specific laws or cases decided in a particular State. Agencies should consult State legislation and court decisions, if any, relative to drug testing in a particular State. If these are contrary to the recommended guidelines, State legislation and court decisions must be followed.

Drug Testing in the Juvenile Probation and Parole Setting. This document, *Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies* applies only to testing juvenile probationers and parolees and is not intended to be used for drug testing in any other context. The law governing the drug testing of probationers and parolees differs from the testing of employees in the workplace.[1] Because probationers and parolees have been convicted of a crime, they are not entitled to the full constitutional protection given to law-abiding citizens. As stated by the United States Supreme Court, in *Morrissey v. Brewer*, 408 U.S. 471, 494, 92 S.Ct. 2593 (1972):

> The revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations....Revocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent on observance of special parole restrictions.

Similarly, probation is a penal alternative to incarceration. The objectives are to foster the juvenile's reformation and to preserve the public's safety. A sentencing court is given broad discretion to fashion the conditions of probation it deems necessary to ensure the individual successfully completes his or her term of probation, and may impose conditions that would impinge on the ordinary citizen's constitutional rights.[2]

As stated by the Supreme Court in *Griffin v. Wisconsin*, 483 U.S. 868, 107 S.Ct. 3164, 3168, 97 L.Ed. 2d 709 (1987):

> A State's operation of a probation system, like its operation of a school, government office, or prison, or its supervision of a regulated industry, likewise presents "special needs" beyond normal law enforcement that may justify departures from the usual warrant and probable cause requirements.

The courts have wide discretion in imposing conditions upon parolees and probationers. Such restrictions are meant to assure that a period of rehabilitation occurs and that society is not harmed by the probationer's or parolee's presence in the community. These goals "require and justify the exercise of supervision to assure that the restrictions are in fact observed." Requiring a probationer or parolee to submit to urine tests has been held by the courts to be a constitutionally acceptable condition.[3]

Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies has been carefully tailored to satisfy Federal and State constitutional requirements relating specifically to juvenile probationers and parolees. Because of the diminished constitutional protection afforded to probationers and parolees, the application of the guidelines in contexts such as the workplace, where employees enjoy full constitutional protection, is inappropriate. Specifically, these guidelines and practices have been developed for postadjudication purposes only. Pretrial services agencies should refer to the drug testing standards developed by the National Association of Pre-Trial Services Agencies.

History of Juvenile Law in the United States. Prior to 1899, juveniles who violated the law in the United States were treated no differently than adult criminals. Children were often given severe sentences and were incarcerated in prisons and jails with adult inmates. In 1899, Illinois became the first State to create a juvenile court. Other States quickly followed suit and by 1917 only three States did not have juvenile courts. In *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428, 1437 (1967), the United States Supreme Court described the situation which gave rise to juvenile justice reform in the United States:

> The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. They were profoundly convinced that society's duty to the child could not be confined by the concept of justice alone.

---

[1] *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S. Ct. 1756, 1759–60 (1973) ("there is no difference relevant to the guarantee of due process between the revocation of parole and the revocation of probation").

[2] *United States v. Williams*, 787 F.2d 1182, 1185 (7th Cir. 1986).

[3] *See, e.g., People v. Roth*, 397 N.W.2d 196 (Mich. Ct. App. 1986); *Creel v. Texas*, 710 S.W.2d 120 (Tex. Ct. App. 1986).

> They believed that society's role was not to ascertain whether the child was "guilty" or "innocent," but "What is he, how has he become what he is, and what had best be done in his interest and in the interest of the State to save him from a downward career." The child—essentially good, as they saw it—was to be made "to feel that he is the object of [the States's] care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.

The term used to describe the State's power to act as surrogate parent for the protection of the juvenile is "parens patriae" which literally means "parent of the country."[5]

From 1899 to 1967, wide differences existed between the juvenile justice system and the criminal justice system. Courts relied on the premise that juvenile proceedings were civil rather than criminal in nature, and a juvenile was not entitled to the full constitutional protection afforded an adult accused of a crime. For example, courts held that a juvenile was not entitled to bail; to indictment by grand jury; to immunity against self-incrimination; to confrontation of his accusers; nor to counsel.[6]

In *Kent v. United States*, the Supreme Court expressed concern that not only were juvenile courts failing to meet the rehabilitative needs of juveniles, but that "there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." Recognizing the problems caused by the parens patriae philosophy, the Supreme Court began with *Kent* to address the issues of constitutional rights of the juvenile. In *Kent* and following decisions, the Supreme Court firmly established that the 14th amendment's due process clause requires that juveniles are entitled to due process and fair treatment.

In re Gault stands as the seminal case on juveniles' constitutional rights. In the case of *In re Gault*, a 15-year-old boy was adjudicated a juvenile delinquent for making lewd telephone calls and was committed to an industrial school for the period of his minority. If he had been an adult, the penalty would have been a fine ranging from $5 to $50 or a maximum of 2 months' imprisonment. The Supreme Court, citing *Kent*, held that a juvenile court adjudication of delinquency must measure up to the essentials of due process and fair treatment which is part of the 14th amendment's due process clause.[7] Due process and fair treatment, the Court held, entitles juveniles to written notice of the charges against them, notification of the right to counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination. The Court cautioned, however, that its holding was limited to only the juvenile adjudicative stage and not applicable to the pre-judicial or postjudicial or dispositional stages of the juvenile process.[8]

In decisions following *In re Gault*, the Supreme Court continued to address the constitutional rights of the juvenile. In *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068 (1970), the Court held that proof beyond a reasonable doubt is a constitutional requirement in an adjudicatory proceeding when a juvenile is charged with an act which would constitute a crime if committed by an adult. The Court next addressed constitutional rights of juveniles in *McKeiver v. Pennsylvania*, 403 U.S. 528, 91 S.Ct. 1976 (1971), and concluded that a jury trial is not constitutionally required in a juvenile court's adjudicative stage. The Court commented that "if the jury trial were to be injected into the juvenile court system as a matter of right, it would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system and possibly, the public trial."[9] In 1975, the Supreme Court again considered the rights of the juvenile in *Breed v. Jones*, 421 U.S. 519, 95 S.Ct. 1779, holding that the fifth amendment's double jeopardy clause is applicable to juvenile delinquency proceedings. The Court held that transfer hearings are required before the start of any adjudicative proceedings in juvenile court to determine if the juvenile should be prosecuted as an adult.

---

[5] "What Ever Happened to *In re Gault* and Fundamental Fairness in Juvenile Delinquency Proceedings?" – *Schall v. Martin*, 22 Wake Forest Law Review 347, 350 (1987).

[6] *Kent v. United States*, 383 U.S. 541, 556, 86 S.Ct. 1045, 1054 (1966).

[7] *In re Gault*, 86 S.Ct. at 1445.

[8] *Id.* at 1436.

[9] *McKeiver v. Pennsylvania*, 91 S.Ct. at 1988.

More recently, the Supreme Court has addressed constitutional questions with respect to juveniles in *Schall v. Martin*, 467 U.S. 253, 104 S.Ct. 2403 (1984), and *Thompson v. Oklahoma*, 487 U.S. 815, 108 S.Ct. 2687 (1988). In *Schall*, the Court upheld a New York statute allowing pretrial detention of juveniles upon a finding of serious risk that the juvenile may commit a crime before the return date. In *Thompson*, the Court held that the 8th and 14th amendments prohibited execution of a person under 16 years of age at the time of his or her offense.

Juvenile Probation and Parole Law. The U.S. Supreme Court has not addressed the constitutional requirements due a juvenile in parole revocation or probation revocation proceedings.[10] State courts that have considered the constitutional rights of juveniles in the revocation of probation or parole have generally held that juveniles are entitled to the same rights as adults. In *State v. McQueen*, 259 S.E.2d 420, 422 (W. Va. 1979), the West Virginia Supreme Court first noted that "many jurisdictions have held that juveniles are entitled to at least a minimum of procedural due process rights in parole revocation proceedings." The court held that a juvenile subjected to parole revocation be afforded all of the constitutional protections afforded an adult. Similarly, in *People in Interest of C.B.*, 585 P.2d 281, 283-84 (Colo. 1978), the Colorado Supreme Court noted that "children and adults facing revocation of probation are in legally and practically indistinguishable positions" and held that the same standard of proof which governs adult probation revocation applies to juvenile proceedings.

Other courts have upheld specific constitutional rights for juveniles in revocation proceedings. In *In Interest of Davis*, 546 A.2d 1149 (Pa. Sup. 1988), the Superior Court of Pennsylvania concluded that "a juvenile has the same substantial interest in retaining his liberty as an adult" and held:

> In view of the substantial liberty interests which exist in not having probation revoked on the basis of unverified facts or erroneous information, we conclude that due process considerations entailing the right to confront and cross-examine an accuser must extend to probation revocation proceedings for a juvenile.

The court concluded that the juvenile's due process rights had been violated by revocation of probation solely on the basis of a hearsay statement.

In *In Interest of R.E.M., Jr.*, 514 N.E.2d 593 (Ill. App. Dist. 4 1987), the Illinois Appellate Court held that the juvenile must be fully apprised of the conditions of probation, preferably by providing him with a written certificate enumerating the specific conditions of probation. In *In re B.C.*, 311 S.E.2d 857 (Ga. App. 1983), the court held that a juvenile and his parents or legal guardians are constitutionally entitled to advance notice of the revocation hearing of the specific issues.

At least one jurisdiction, however, has found a difference between the liberty interests of adult and juvenile probationers. In *In re Todd L.*, 113 Cal. App. 3d 14, 169 Cal. Rptr. 625 (Cal. App. 2d Dist. 1981), the court found the liberty interest of a juvenile to be different than the liberty interest of an adult because a juvenile's liberty interest is subject to regulation by the State to a greater degree than that of an adult. The court concluded that this difference justified the imposition of probation conditions upon a juvenile that consider not only the circumstances of the crime but also the juvenile's entire social history. Thus, the court reasoned, conditions of probation which are not permissible for an adult may not be unreasonable for a juvenile in need of guidance and supervision.

The imposition of drug testing upon juveniles as a condition of probation or parole has been upheld by the courts that have addressed the issue. In *In re Jimi A.*, 257 Cal. Rptr. 147 (Cal. Ct. App. 1989), the juvenile court found that the juvenile defendant committed battery and disturbed the peace on school property. The juvenile had an admitted background of substance abuse. At the dispositional hearing, the court imposed certain terms and conditions of probation including the condition that the juvenile submit to random drug testing. The juvenile appealed, arguing that the conditions imposed, including drug testing, were improper. In affirming the disposition, the appellate court quoted from an earlier case:

---

[10] The Supreme Court has held that there is no relevant difference to the guarantee of due process between the revocation of parole and the revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756, 1759–60 (1973). Similarly, there is basically no difference between juvenile probation revocation proceedings and juvenile parole revocation proceedings. *State ex rel. E.K.C. by D.C. v. Daugherty*, 298 S.E.2d 834 (W. Va. 1982).

> Because of its rehabilitative function, the juvenile court has broad discretion when formulating conditions of probation. "A condition of probation which is impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court." [citation omitted] "In planning the conditions of the appellant's supervision, the juvenile court must consider not only the circumstances of the crime but also the minor's entire social history..." (*In re Frankie J.*, 1988) 198 Cal. App. 3d 1149, 1153, 244 Cal. Rptr. 254, quoting *In re Todd L.*, (1980) 113 Cal. App. 3d 14, 20 169 Cal. Rptr. 625.

In *People In Interest of C.J.W.*, 727 P.2d 870 (Colo. Ct. App. 1986), conditions of probation included the requirement that the juvenile attend counseling and undergo monitored urinalysis. The appeals court upheld the revocation of probation for failure to appear for counseling and urinalysis.

Conclusion. In a series of cases beginning with *Kent v. United States* in 1966, the U.S. Supreme Court set forth the constitutional rights of juveniles, primarily in the adjudicatory stage of proceedings. Although the Supreme Court has not addressed the question of the constitutional rights of juvenile probationers and parolees, the weight of authority at the State court level indicates that the majority of State courts appear willing to extend the same constitutional protection to juveniles that is afforded adult probationers and parolees. Although few courts have addressed the specific issue of drug testing for juveniles on probation and parole, the imposition of drug testing as a condition of probation and parole has been upheld as permissible for juveniles, generally under the same circumstances as considered reasonable for adults.

Consequently, the same legal issues are present in testing juveniles for drugs as in testing adult probationers and parolees. The case law involving legal challenges by adult probationers and parolees alleging violations of the right against self-incrimination, the right to due process, the right against unreasonable search and seizure, and the right to confrontation and cross examination should be considered in developing juvenile drug testing policies and procedures.

AGENCY MISSION

The mission of a juvenile probation or parole agency usually includes the surveillance of juveniles to protect the community, the deterrence of future criminal behavior, and the provision of some type of professional guidance to juveniles.

1–1. DRUG TESTING SHOULD BE IMPLEMENTED SO AS TO ENHANCE THE LEGITIMATE MISSION OF THE JUVENILE PROBATION AND PAROLE AGENCY.

Commentary: Drug testing goals and objectives should support the established mission of the parent government agency. Public sector agencies generally derive their formal mission statements from enabling legislation or from other legal directives that mandate policy objectives. Such legal mandates are clear and consistent and typically identify the principal factors supporting the overlying policy objectives. The implementing agency is then granted sufficient jurisdiction to attain the desired goals. Mission statements are usually broad, thus allowing an environment conducive to organizational decisionmaking. The task for a juvenile justice agency implementing a drug testing program is to develop a mission statement which will reflect legislative and judicial intent.

The extent to which an agency uses drug testing may be determined in part by:

- The agency mission statement.
- The availability of agency resources.
- The drug use patterns of the juvenile probation and parole population.
- The sentencing patterns in the jurisdiction.

PURPOSE OF TESTING

2–1. JUVENILE PROBATION AND PAROLE PERSONNEL SHOULD PRESENT DOCUMENTATION TO THE AGENCY ADMINISTRATORS WHICH WILL CONFIRM THAT A DRUG PROBLEM EXISTS AND THAT THERE IS A NEED FOR A DRUG TESTING PROGRAM.

2–2. AGENCY POLICYMAKERS SHOULD PREPARE A PLAN SPECIFYING THE GOALS AND OBJECTIVES OF THE PROPOSED PROGRAM AND SUBMIT IT TO THE AGENCY ADMINISTRATORS.

Commentary: Succinctly written drug testing goals and objectives are vital:

- For implementing the drug testing program.
- For ensuring staff comprehension, acceptance, and cooperation essential for program success.
- For establishing the operational framework upon which drug testing policies and procedures should be implemented.

Each jurisdiction will have unique conditions which will require selecting or modifying the following guidelines to its needs. An agency's drug testing goals may include any combination of the following:

- Identification.
- Assessment.
- Deterrence.
- Surveillance.
- Treatment.

2–3. THE PLAN SHOULD EXPLAIN HOW THE APPROACH WILL SOLVE THE PROBLEM WITHIN A GIVEN TIME FRAME.

Commentary: Constructing a foundation in this way is the first essential step in developing a harmonious relationship among the drug testing unit's personnel, the parent agency's leadership, the judiciary, and community-based treatment agencies. Specifically, details should be provided on how the program:

- Will work with the courts.
- Will operate within the corrections agency.
- Will use the capabilities of existing community-based counseling and treatment programs.
- Will affect the courts, the corrections agency, and the community-based counseling and treatment programs.

Drug testing in the juvenile justice system should be one component within a continuum of services designed to hold juveniles accountable, while meeting the individual treatment needs of each juvenile.

DRUG TESTING POLICIES AND PROCEDURES

Administration

3–1. JUVENILE PROBATION AND PAROLE AGENCIES SHOULD IMPLEMENT DRUG TESTING PROGRAMS ONLY AFTER ESTABLISHING RELEVANT POLICIES AND PROCEDURES.

Commentary: An important element of a drug testing program for juvenile probation and parole agencies is a succinctly written statement of the formal policy goals and objectives. Legislative statutes, judicial orders, and policy directives originating from within the agency usually supply the impetus for developing program policy.

Within the testing agency, written policy will help formalize goals and objectives while providing the general framework for policy implementation and ensuring program direction, understanding, and unity of purpose. Written policy will also promote consistency and continuity during program implementation and periods of personnel changes.

Within the parent government agency, written drug testing policies and procedures will assist the organization in embracing the long-term goals and objectives of the program. Agency policymakers should incorporate mechanisms that will allow for policy revision and the objective and neutral evaluation of policy effectiveness by outside consultants.

3–2. DRUG TESTING POLICY FOR JUVENILE PROBATION AND PAROLE AGENCIES SHOULD BE CONSISTENT WITH THE APPA DRUG TESTING GUIDELINES EXCEPT WHERE THESE GUIDELINES ARE INCONSISTENT WITH STATE OR LOCAL LAW, CASE PRECEDENT, OR OTHER RECOGNIZED AUTHORITY.

Commentary: In case there is a conflict, State or local law should prevail.

3–3. JUVENILE PROBATION AND PAROLE AGENCIES SHOULD SEEK CLARIFICATION OF THE SPECIFIC ROLES OF GOVERNMENT AND COMMUNITY-BASED ORGANIZATIONS INVOLVED IN DRUG TESTING.

Commentary: Clarification will make the entire process more efficient and ensure that all parties agree on the basic tenets of the program and the responsibilities of each party.

3–4. JUVENILE PROBATION AND PAROLE AGENCIES SHOULD DEFINE THE RESPONSIBILITIES AND FUNCTIONS OF THE DRUG TESTING PROGRAM, UNLESS THESE HAVE BEEN DEFINED BY STATE LAW.

3–5. THE AGENCY SHOULD SUBMIT THE DRUG TESTING POLICIES AND PROCEDURES TO THE APPROPRIATE JUDICIAL OR PAROLE BOARD PERSONNEL FOR REVIEW AND COMMENT PRIOR TO PROGRAM IMPLEMENTATION.

Commentary: Appropriate updates or changes to the policies and procedures should be distributed to the appropriate judicial or parole board personnel as they become effective.

3–6. THE POLICIES AND PROCEDURES SHOULD BE REVIEWED BY AN APPROPRIATE LEGAL AUTHORITY OR BY A KNOWLEDGEABLE ATTORNEY TO ENSURE THAT THEY COMPLY WITH STATE LAW.

Commentary: In view of statutory and case law variations from State to State, the manual must be reviewed by persons with legal expertise. In some cases, it may be appropriate for the State attorney general's office to review the policies and procedures to ensure that they comply with State law.

3–7. POLICIES AND PROCEDURES SHOULD BE DISSEMINATED IN A CLEARLY AND CONCISELY WRITTEN DOCUMENT.

Commentary: A drug testing manual is essential if both the agency and its officers are to institute an effective and legally defensible testing program. The provisions of this manual are an important source of information.

3–8. THE AGENCY SHOULD DEVELOP RELEVANT AND NECESSARY FORMS TO EFFECTIVELY AND EFFICIENTLY ADMINISTER THE DRUG TESTING PROGRAM'S POLICIES AND PROCEDURES.

3–9. WRITTEN DRUG TESTING POLICIES AND PROCEDURES SHOULD BE DATED AND REVIEWED ANNUALLY.

3–10. AGENCY PERSONNEL INVOLVED IN DRUG TESTING SHOULD PARTICIPATE IN THE CONTINUING REVIEW OF THE DRUG TESTING GOALS, POLICIES, PROCEDURES, RULES, AND REGULATIONS.

Commentary: Although the director has ultimate responsibility for the agency, staff at every level can contribute to the development of a drug testing policy. Staff participation in decisionmaking processes helps to insure that the attitudes and values of the individual members are synonymous with those of the agency.

3–11. THE AGENCY SHOULD MAINTAIN A DIRECTORY OF COMMUNITY RESOURCE AGENCIES FOR REFERRAL AND TREATMENT PURPOSES.

Commentary: Juvenile probation and parole agencies have a direct effect on the community. Every effort should be made to establish and promote the utilization of community resources that will have a positive effect on juveniles' rehabilitation.

3–12. THE AUTHORITY, RESPONSIBILITY, AND ACCOUNTABILITY OF DRUG TESTING PERSONNEL SHOULD BE CLEARLY IDENTIFIED IN THE POLICIES AND PROCEDURES MANUAL.

Commentary: An organization chart may be used. It should be signed, dated, and amended as necessary at least once a year.

3–13. THE AGENCY SHOULD APPOINT A DRUG TESTING PROGRAM COORDINATOR TO MANAGE THE AGENCY'S DRUG TESTING ACTIVITIES IN ACCORDANCE WITH ESTABLISHED POLICIES AND PROCEDURES.

Commentary: A coordinator should be identified for any agency having drug testing capability of some kind, whether it be onsite instrument drug testing or contracted services.

Training

3–14. AGENCY STAFF SHOULD BE PROVIDED TRAINING THAT COVERS THE GOALS, OBJECTIVES, POLICIES, AND PROCEDURES OF THE DRUG TESTING PROGRAM.

Commentary: Each staff member should possess a copy of *Drug Testing Policies and Procedures*, which they should read and understand. Staff should be sufficiently trained as to the agency's drug testing goals and objectives, and be familiar with the duties required. Feedback and dialog from staff should always be encouraged during agency training sessions and staff meetings.

The agency should establish a training program to ensure that appropriate agency personnel understand the intent of the drug testing policies and procedures. The agency drug testing coordinator should review and participate in the training program. A specific period of time is not recommended for the training program since each agency will have different variables to consider: size, available resources, offender population, selection of methodology, and the choice of laboratory settings. The basic training should be comprehensive and may be handled as part of an orientation program for new employees or inservice training.

Additional training subjects should include, but are not limited to: hygiene and safety precautions, onsite instrument maintenance and cleanup procedures, and preparation for court testimony.

3–15. AGENCIES SHOULD NOT COLLECT URINE SPECIMENS UNLESS THEY INTEND TO HAVE THE SPECIMENS TESTED FOR THE PRESENCE OF DRUGS OR DRUG METABOLITES.

Commentary: Some agencies have engaged in the practice of collecting specimens without submitting them to a laboratory for analysis. This is practiced to deter drug use by threatening sanctions without actually incurring costs. This practice represents extremely bad policy, since offenders learn that they can "beat the system" because positives go undetected. Additionally, this practice violates the trust between the officer and offender and wastes staff time in collecting specimens needlessly.

AUTHORITY TO TEST

Authorization

4–1. OFFICERS SHOULD DETERMINE WHETHER PROPER AUTHORIZATION EXISTS PRIOR TO REQUESTING A DRUG TEST.

Commentary: In most jurisdictions, the authorization for drug testing will be found in State statutes, judicial or parole board orders, or departmental decrees. Agencies conducting drug testing should acknowledge the legal mandates for such authorization in their policies and procedures. For example, the Department of Corrections, Probation and Parole Services has the authority to test (for drugs) according to Florida Statute 948.03 and as stated in the standard probation order issued by the courts.

4–2. THE AUTHORITY TO CONDUCT DRUG TESTING, AS A CONDITION OF PROBATION OR PAROLE, SHOULD BE DEFINED BY STATE STATUTE, THE JUVENILE COURT, OR PAROLE BOARD ORDER, AND ADMINISTRATIVELY BY THE PARENT GOVERNMENT ORGANIZATION (FOR EXAMPLE, DEPARTMENT OF CORRECTIONS).

Commentary: This guideline should be mandatory during the predisposition and postsentencing phases. This standard may be augmented when a presiding juvenile court judge or parole board orders drug testing as a specific condition of probation or parole for an individual case. A court order for drug testing should reduce the probability of a successful legal challenge.

4–3. DRUG TESTING SHOULD BE AUTHORIZED BY STATE LAW INSTEAD OF BEING MERELY A CONDITION IMPOSED BY THE JUDGE OR PAROLE BOARD.

Commentary: Although courts have generally considered drug testing valid when imposed by the judge or parole board without legislative authorization, the passage of such legislation ensures a more successful defense against potential legal challenges. Whenever possible, such a condition should be authorized by law.

An agency which adopts the above standard to conduct drug testing can be confident that the probability of a successful court challenge based on the authority to test will be greatly diminished. However, agencies must remain cognizant of the many other areas where successful court challenges may originate.

4–4. AGENCIES SHOULD ENCOURAGE THE ENACTMENT OF LEGISLATION WHICH AUTHORIZES DRUG TESTING AS A CONDITION OF PROBATION AND PAROLE AND EXEMPTS OFFICERS AND AGENCIES FROM CIVIL LIABILITIES ARISING FROM THE IMPOSITION AND IMPLEMENTATION OF DRUG TESTING UNDER STATE LAW, BUT NOT UNDER FEDERAL LAW.

Commentary: The U.S. Supreme Court has held in *Martinez v. California*, 444 U.S. 277 (1980) that such a law is valid when used to defeat claims under State tort law, although not for claims based on Federal law. An immunity provision enables officers to perform the task of drug testing more effectively, knowing that the legal risks in this intensifying field of supervision are removed through legislation.

4–5. IN THE ABSENCE OF A STATE STATUTE TO CONDUCT DRUG TESTING, JUVENILE PROBATION AND PAROLE AGENCIES SHOULD SEEK A COURT OR PAROLE ORDER TO AUTHORIZE TESTING AS A CONDITION OF PROBATION OR PAROLE.

Commentary: Whether authorized by statute or not, drug testing is better imposed by the juvenile judge or board as a routine condition of probation and parole in cases where it is reasonably related to the rehabilitation of the juvenile. Court decisions indicate that drug tests are valid anyway despite the absence of law or court order, but officers and the agency are better protected from possible civil liabilities if the condition is imposed by law, the juvenile judge, or the parole board. To assure flexibility based on individual needs, the agency must be given the discretion to determine when or how often the test may be conducted.

When To Test

4–6. THE FREQUENCY OF DRUG TESTS SHOULD BE LEFT TO THE DISCRETION OF THE AGENCY UNLESS SPECIFIED BY THE JUVENILE COURT OR A PAROLE BOARD ORDER.

Commentary: Drug testing should be unscheduled unless otherwise specified by a court order or depending upon individual needs as determined by the agency. Drug testing "for cause" based on "reasonable suspicion" is clearly valid. The same is true of periodic or scheduled testing. Unscheduled testing (meaning testing without cause or prior warning) in probation and parole has not, however, been addressed directly by the courts, although testing in a prison setting has been upheld by at least one court. Inasmuch as prisoners, probationers, and parolees have diminished constitutional rights, there are strong reasons to think that unscheduled testing will most likely be upheld by the courts as long as it has been imposed as a condition and does not constitute harassment.

4–7. DRUG TESTING SHOULD BE IMPOSED AS A CONDITION OF PROBATION OR PAROLE IN CASES WHERE:

- The offender has a history of drug use.
- It is reasonably related to the rehabilitation of the offender.
- It is needed to identify users who have no outward appearance or history of drug use.

Commentary: A juvenile's status and criminal record could likely be attributed to drug use. Given the correlation between drug use and crime, it is reasonable to impose drug testing for both public safety and rehabilitative purposes. From a public safety point of view, it is the responsibility of probation and parole agencies to ensure that everyone under their jurisdiction is drug free. Since it is impossible to determine who has or has not used drugs, submission of a sample upon request could reasonably be a condition for every juvenile.

From the rehabilitation point of view, drug testing results can be a positive part of treatment if the results are presented appropriately to the juvenile. For example, should a juvenile who continues drug use during treatment deny such use, a positive can be used to confront the juvenile. Even occasional use can be spotted before the juvenile falls back into a pattern of regular use. Drug testing often provides a positive reinforcement for juveniles who remain drug free. It may help them to resist peer pressure to use drugs. If an unscheduled (random) collecting and testing program is used, a daily phone call to determine whether a specimen is required reminds them that they are part of the program every day.

4–8. IF AN OFFICER HAS A REASONABLE SUSPICION THAT A JUVENILE NOT REQUIRED TO SUBMIT TO DRUG TESTING IS USING DRUGS, THE OFFICER SHOULD ATTEMPT TO OBTAIN A COURT MODIFICATION OF THE CONDITIONS ALLOWING THE TEST TO BE PERFORMED.

Commentary: Although courts have generally accepted drug testing as a means of monitoring the juvenile, at least one court has expressed a preference for such modification, and another court upheld testing when such a modification was made. This is a better approach than simply imposing the test without a judicial order or condition modification.

4–9. STATE STATUTES AND JUVENILE COURT OR PAROLE BOARD ORDERS SHOULD PROVIDE JUVENILE PROBATION AND PAROLE AGENCIES WITH THE AUTHORIZATION TO USE DISCRETION IN DETERMINING WHEN AND WHERE TO REQUIRE A DRUG TEST.

SELECTING DRUG TESTING METHODOLOGIES

Methodology Selection

Agency needs related to drug testing should be identified and assessed prior to selecting a methodology. The purpose of testing and how it relates to the mission of the agency should be determined. This review should be done in the form of a formal needs assessment that could be sent to field staff and agency authorities and could be achieved by a thorough examination of relevant data accessible to the agency.

Once the needs of the agency have been defined, it will become necessary to prioritize those needs. This is necessary when selecting a proposal because often an agency will have to justify its choice. The choice should be made based on which proposal best meets the identified priority needs of the agency. If this work is done thoroughly and is well documented from the beginning, it will help ensure an effective and satisfactory selection process.

When developing a drug testing program, the agency should select a methodology that will provide a program which is consistent with the agency mission. Juvenile probation and parole agencies will become involved in selecting the drug testing methodology, or a combination of methodologies, for use in their programs. An agency implementing a drug testing program will primarily use an immunoassay as the initial test. The four types of immunoassays presently available are radio immunoassay (RIA), latex agglutination inhibition immunoassay, fluorescein polarization immunoassay (FPIA), and enzyme immunoassay. Occasionally, an agency may need to test for a drug which cannot be screened using an immunoassay. In such a case, other screening methodologies are appropriate only when an immunoassay is not available for a particular drug.

Agency authorities examining methodology issues also will be involved in determining the most appropriate location for their drug testing operations; that is, onsite versus contracted. The following guidelines should be examined by the agency before moving into the selection process.

5–1. THE TARGET POPULATION AND FREQUENCY OF TESTING SHOULD BE IDENTIFIED TO DETERMINE THE NEEDED EXTENT OF TESTING.

5–2. THE AVAILABILITY OF FUNDS FOR IMPLEMENTING A DRUG TESTING PROGRAM SHOULD BE DETERMINED PRIOR TO SELECTING A METHODOLOGY.

Commentary: The cost effectiveness of each methodology should be considered. Nothing will affect an agency's drug testing program or selection of methodology more than the availability of resources. Sufficient funding is a necessity for even the smallest testing program. These resources can come from a variety of sources such as State and Federal funding or grants. It is critical that an agency clearly outline and justify its testing needs to obtain sufficient funding.

5–3. CURRENT TESTING PRACTICES SHOULD BE REVIEWED AS PART OF THE PROCESS IN CHANGING METHODOLOGIES OR CONSIDERING A CHANGE IN METHODOLOGY.

Commentary: Juvenile agencies may already be involved in drug testing. Changes in the program format may be sought due to new technologies, different resource allocations, or dissatisfaction with current practices. If agencies are involved in some form of testing, it is essential they analyze current practices to identify needed changes for implementing an effective plan of action.

5–4. THE AVAILABILITY OF A TRACKING SYSTEM SHOULD BE CONSIDERED WHEN SELECTING A METHODOLOGY.

Commentary: Agencies may already have developed a method for tracking test results. However, if changes are being contemplated, the most advanced tracking method should be considered. This may involve the utilization of a computer software program developed specifically for tracking testing results. Tracking can also measure long-term effectiveness of treatment programs.

5–5. PROJECTIONS IN THE ANTICIPATED EFFECT OF TESTING, SUCH AS DETERRENCE OR REVOCATION OF PAROLE, SHOULD BE MADE FOR EACH METHODOLOGY CONSIDERED.

5–6. THE DESIRED LOCATION FOR TESTING (ONSITE SYSTEMS OR CONTRACTING OUT) SHOULD BE DETERMINED.

5–7. THE IMPORTANCE OF TESTING ACCURACY SHOULD BE CLEARLY ESTABLISHED.

Commentary: Some methodologies are more accurate than others. The need to use the most accurate and reliable methodology should be balanced against the costs associated with each methodology.

5–8. INFORMATION FROM FIELD STAFF RESPONSIBLE FOR IMPLEMENTING DRUG TESTING SHOULD BE ACQUIRED AND INCORPORATED INTO THE DECISIONMAKING PROCESS.

Methodology Review

A degree in toxicology is not required to select an effective methodology. However, it is important that an agency become familiar with the advantages and disadvantages of each methodology and avoid basing its decision solely on the information provided by a single supplier. Agencies should become aware of several sources of information on drug testing methodology:

- From suppliers.
- From literature reviews.
- From established programs.
- From professional organizations.

A careful review may uncover hidden costs in a drug testing system which would not be evident unless an agency questioned the very methodology the system uses. During this time, an agency should become familiar with the different definitions involved in testing such as reliability, accuracy, cutoff, sensitivity, and validity. Only by having a basic understanding of this terminology will an agency be able to see how different manufacturers may manipulate these definitions to support their systems.

Reliability and Accuracy

Reliability and accuracy are of utmost importance in drug testing. They relate to the issue of fairness and focus mainly on technology used for the test. If given due attention, they spare the agency the expense and trouble of having to defend constitutional challenges in court.

The twin dangers associated with reliability and accuracy are false positives and false negatives. In general terms, false positive means that a test result shows that a juvenile used drugs when in fact he or she did not. Conversely, a false negative means that the test result shows that the juvenile has not used drugs when in fact he or she did. No legal issues are raised in false negative results, but a constitutional due process (fundamental fairness) issue arises in false positives. A reliable drug test must minimize, if not completely eliminate, false positives and false negatives.

One-hundred-percent certainty is not required in drug tests. Neither is it required in any phase of the criminal justice process. What is required, however, is that the test be highly reliable and accurate. The degree of certainty required for admissibility of technical evidence varies from court to court even within a State. Whether or not a particular type of drug testing is reliable enough for the results to be admissible is up to the court and is a matter of expert testimony.

If an agency is having difficulty determining the best methodology, it should obtain information from other agencies using the various testing systems. However, everyone has biases concerning testing methodologies. Information obtained through the suppliers or other outside agencies should be carefully scrutinized before basing any decisions on this information.

Another approach to compare methodologies accurately could include an inhouse comparison study among the methodologies being considered. This can be set up with the cooperation of the competing suppliers so that an agency can determine which system is most compatible with its needs and mission.

5–9. THE AGENCY SHOULD REVIEW AND HAVE A BASIC UNDERSTANDING OF CURRENT METHODOLOGIES AVAILABLE FOR ITS TESTING NEEDS. (SEE APPENDIX C FOR BRIEF DESCRIPTIONS.)

Commentary: During this preselection phase, the agency should study each of the methodologies considered by challenging its appropriateness to the agency's drug testing needs. This education process can be assisted by the different suppliers, who are usually very willing to set up formal or informal training sessions to explain the methodology they represent. It should be set up with suppliers representing each of the methodologies being considered.

5–10. INFORMATION ON THE METHODOLOGIES SHOULD BE OBTAINED THROUGH INTERVIEWS WITH VARIOUS SUPPLIERS. DISCUSSIONS WITH OTHER AGENCIES USING THE VARIOUS METHODOLOGIES, SUCH AS OTHER JUVENILE PROBATION OR PAROLE AGENCIES OR STATE CRIME LABORATORIES, CAN ASSIST ALSO.

5–11. A REVIEW OF THE SUPPLIERS' PACKAGE INSERTS CAN HELP IDENTIFY WHAT CONDITIONS ARE REQUIRED FOR TESTING PRACTICES.

5–12. AGENCIES SHOULD REVIEW THE BENEFITS AND DETRIMENTS OF EACH METHODOLOGY FOR ITS COMPATIBILITY WITH THE AGENCY'S DRUG TESTING NEEDS AND PURPOSES, POLICIES, AND BUDGET, AS WELL AS THE TESTING SERVICE'S LOCATION (ONSITE, CONTRACTED, OR BOTH).

Commentary: Reviewing the methodologies involves looking into the systems. Determining the methodology and the location of the system are important when establishing a testing program, and in making these decisions, an agency must clearly delineate the advantages and disadvantages of each methodology or system considered. This will include resource allocations which are discussed in the budget costs section of this document. Agencies also need to examine the benefits and detriments of each methodology or system proposal in conjunction with the following issues:

- Required length of chain of custody. (For example, does onsite testing reduce the need for drawn out and potentially more expensive chain of custody requirements, at least for the majority of initial testing?)
- Cutoff levels. (For example, do the cutoff levels of the methodologies or systems considered adapt to the APPA recommendation for cutoffs, or would an agency be locked into set cutoffs which are contrary to levels established for criminal justice testing?)
- Flexibility in handling initial and confirmatory testing based on how an agency will be using the results. (For example, is onsite testing more adaptable to taking advantage of flexibility in APPA confirmatory practices? A contracted laboratory may be locked into a more expensive and timely practice to meet other certification requirements, which do not necessarily apply to criminal justice drug testing.)
- Reliability of systems used. (For example, does a more formal contracted laboratory setting offer more reliable results than an onsite instrument-based drug testing system being considered, as some laboratory professionals contend?)
- Ability to develop drug trend analysis based on test results of target population.
- Potential dichotomy of the same individual acting as the drug tester and the case supervisor. (For example, does onsite testing have a greater potential for misuse of results because the tester also may be involved with imposing sanctions on the offender when a positive result occurs?)
- Ease in obtaining expert testimony when needed.
- Operational requirements that have financial implications. (For example, all potential budget items required for each system must be examined. This includes personnel, training, equipment, and supplies.)

Each of these issues must be thoroughly examined by the agency before deciding on the methodology or system(s). When the decision is made, it is essential to develop clear and succinctly written policies regarding the testing program and its purpose.

Relationship With Suppliers

5–13. AUTHORITIES REPRESENTING THE AGENCY'S INTERESTS SHOULD MAINTAIN AN INFORMED, PROFESSIONAL, AND UNBIASED WORKING RELATIONSHIP WITH THE SUPPLIER REPRESENTATIVES.

Commentary: Suppliers can offer information about the development of their testing programs and policies to an agency. Very often, suppliers are an excellent training and informational resource, although at times some of them can be too assertive and overwhelming. It is important that agency authorities do not become intimidated by the suppliers. Agency authorities must make it clear that the agency has established its testing needs and does not want to rely on the supplier's interpretation of these needs.

Selection Process

5–14. AN AGENCY SHOULD PREPARE AND DISSEMINATE A REQUEST FOR PROPOSAL (RFP) IN ACCORDANCE WITH AGENCY POLICY.

5–15. THE RFP SHOULD BE SPECIFIC TO THE AGENCY'S DRUG TESTING NEEDS.

5–16. MINIMALLY, THE RFP SHOULD SPECIFY:

- The extent the methodology will meet agency needs.
- The testing equipment and supplies needed to run a testing system.
- The identification of every type of drug to be tested.
- The product specifications, including cutoffs.
- The training to be provided by the supplier, both initial and inservice.
- The maintenance and replacement of equipment.
- The details of purchasing or leasing arrangements.
- The other customers using the methodology or product.
- The information regarding the reliability and accuracy of the methodology or product.
- The computer package for tracking results that may be included.
- The delivery arrangements.
- The other service suppliers who may provide troubleshooting services and 800 telephone numbers.
- The documentation and procedural guidelines needed to testify in the event of a legal challenge.

Commentary: These guidelines also apply to contracting for laboratory services.

5–17. THE AGENCY SHOULD ENSURE THAT THE RFP IS WIDELY DISSEMINATED TO AS MANY ELIGIBLE SUPPLIERS AS POSSIBLE.

5–18. PERSONNEL RESPONSIBLE FOR IMPLEMENTING THE DRUG TESTING PROGRAM SHOULD WORK CLOSELY WITH PURCHASING AUTHORITIES THROUGHOUT THE RFP PROCESS.

Commentary: The purchasing process is usually controlled by a separate division. However, in an effort to maintain control of this process, an agency probation or parole authority should be in contact with purchasing authorities to prevent costly delays.

5–19. THE AGENCY SHOULD ESTABLISH A REVIEW PROCESS AND ENSURE THAT THIS PROCESS IS UNDERSTOOD BY THE SUPPLIERS.

Commentary: It is important to carefully review the received proposals to determine which is most appropriate. Ideally, an established review panel could identify major methodological considerations and then initiate an objective scale or point system to measure every consideration. A review panel could substantiate its objectivity if decisions were based on a heretofore agreed upon objective scale or measurement. Typical questions may include:

- Do the prices fall within the agency's allotted resources?
- Will the supplier furnish training and provide a support system for the testing sites?

- Is the agency able to supply a tracking system?
- Are the delivery schedule and costs satisfactory?
- Does the methodology used by the supplier adequately meet the testing needs of the agency?
- Are additional investments needed to implement the methodology?

These are some of the basic considerations when reviewing the proposals. The agency will have to carefully justify the reasons for selecting a certain proposal, particularly if it is not the lowest bid received.

To justify its selection, an agency can show previously identified priorities of testing needs and match them with the services provided by the chosen supplier. In addition, the agency may support its methodology choice through the results of its own inhouse study or referenced studies from outside sources.

CONFIRMATION

The question of confirming drug use by relying on the results of one positive test or by retesting the specimen (so the results can be better defended in court) is a question closely akin to measuring the reliability and sufficiency of evidence.

The question of confirming positive test results involves a choice between extra expenses and legal defensibility of the test results. Confirmation entails additional expense, but it strengthens the agency claim to reliability of results, and in some jurisdictions is a necessity for revocation. Not obtaining a confirmation might lead to a successful legal challenge, although most courts uphold probation or parole revocation and other legal sanctions based on a single test. Currently, there is a problem concerning positive initial screens of amphetamines; confirmation testing should be made on all specimens that screen positive for amphetamines. This is particularly critical now that methamphetamine abuse is increasing so rapidly in many areas of the country.

6–1. AN AGENCY SHOULD DEVELOP AND IMPLEMENT A CONFIRMATION POLICY BASED ON COURT DECISIONS AND BUDGETARY CONSIDERATIONS.

Commentary: Both State and Federal courts have been lenient in confirmatory requirements for drug testing in a criminal justice setting involving probation or parole. The courts do not require that criminal justice testing meet clinical laboratory confirmatory standards. This is due to a combination of factors including:

- The advancements in initial testing accuracy.
- The diminished constitutional rights of juvenile offenders.
- The high cost associated with gas chromatography/mass spectrometry (GC/MS) confirmations.

Some courts only require an initial test result for consideration as evidence in a hearing. However, other courts may require some type of confirmation of the initial positive result. Therefore, several confirmatory options have been used in criminal justice settings. These may include acceptance of one or more of the following as confirmatory methods:

Option 1. A positive result on an initial test plus a signed admission from the juvenile is the recommended and least costly confirmation for any type of action.

Option 2. Retesting the positive specimen using the same methodology may be an acceptable option when the result will be used for confrontation, treatment, monitoring, or minor inhouse disciplinary actions.

Some courts have accepted double EMIT(*) test results in the prison setting as sufficient for confirmation. There are no cases on other tests explicitly addressing the same issue. It is safe to assume, however, that reliability claims are enhanced by a second test and that the EMIT(*) test decision may apply to other forms of testing as well. This method would not be considered good practice when attempting to revoke an offender (who denies drug use) to some form of incarceration based solely on a positive test result.

Option 3. Testing the positive specimen on a different immunoassay test than the initial screen, and one that is at least equal in sensitivity, reliability, and accuracy to the initial test, may be an acceptable option when the result will be used for confrontation actions and progressive sanctions. However, in the event that a discrepancy occurs in the two test results, a GC/MS confirmation must be obtained or the test results should not be used as evidence in court.

CAUTION: If initial positive tests are handled by the above confirmation options 2 and 3, they cannot be used in the future as sole evidence in a revocation proceeding that may result in some form of incarceration.

Option 4. Arranging for specimens to be sent to a GC/MS laboratory site for a "clinically approved" confirmation is necessary for the following conditions: a denial of use, a discrepancy in two initial results, or a court requirement for GC/MS confirmations. Where funds are limited, GC/MS confirmations may be arranged at the defendant's expense.

The above options can apply to both onsite testing as well as contracted offsite testing. Contract laboratories may use confirmation techniques such as GC, HPTL, and HPLC for test results which will *not* be used in legal revocation proceedings but will be used for the inhouse management of the juvenile. These methods may only be applied when an agency clearly identifies (for the contracted laboratory site) how results will be used; otherwise, GC/MS is the only acceptable confirmation alternative.

The decision to confirm should be based upon two considerations:

1. Whether the courts in the jurisdiction will accept positive test results without confirmation.
2. Whether, assuming that the courts in that jurisdiction require confirmation, the expense is worth the results. If the courts in the jurisdiction do not require confirmation, then obviously no legal problems arise, at least for the moment. The decision may be appealed to a higher court, but unless the higher court decides otherwise, the decision of the trial court prevails. In these cases, a consideration might be whether the agency feels it has a moral obligation not to take action until the possibility of error is largely eliminated through confirmation. On the other hand, if the courts in that jurisdiction require confirmation, then confirmation is a must unless the agency is prepared to take the chance that its initial decision, if taken to court, will not be sustained. In these jurisdictions, the agency might decide that budgetary constraints dictate that taking that chance is the better option.

Admissions

6–2. THE OFFICER SHOULD, WHERE FEASIBLE, ATTEMPT TO OBTAIN AN ADMISSION OF DRUG USE FROM THE JUVENILE FOLLOWING AN INITIAL SCREEN WHICH REVEALS A POSITIVE RESULT.

Commentary: An admission from the juvenile after confrontation with a positive test result should be considered "confirmation by the juvenile." The admission of drug use by the juvenile is one of the pivotal points on which the entire confirmation issue rests. An admission simplifies the entire process and saves time, effort, and resources.

Unconfirmed positive results may be used to confront a juvenile. Care should be given to review the prescription in writing or the over-the-counter medication the juvenile may have admitted to using when given the opportunity to do so, prior to the drug test. This is important to review before confrontation occurs since initial screening tests identify classes of drugs, such as opiates, and not the specific drugs within the class such as codeine, morphine, or hydromorphine. An officer should consult with the testing system manufacturer or certified laboratory personnel when questioning the potential cross-reactivity of a certain legal or legally prescribed substance. By reviewing this information, an officer can eliminate the possibility of confronting a juvenile for the wrong reasons.

6–3. IF THE JUVENILE ADMITS TO THE USE OF ILLEGAL DRUGS FOLLOWING ANY POSITIVE DRUG TEST WHILE UNDER AGENCY SUPERVISION, THE OFFICER SHOULD REQUEST A SIGNED WRITTEN ADMISSION, PREFERABLY IN THE PRESENCE OF WITNESSES.

Commentary: If an admission is received, otherwise known as "confirmation by the juvenile," it may not be necessary to proceed with a confirmatory drug test. The admission is sufficient confirmation, unless:

- The juvenile proves that such an admission was coerced (the presence of witnesses, who may include agency staff, makes it more difficult for the juvenile to allege coercion).
- The use of additional substances is questioned.

- The juvenile is suspected of admitting to the use of a "soft" drug to mask the use of a "hard" drug.

6–4. IF THE JUVENILE DOES NOT CONFESS AFTER BEING INFORMED OF TESTING POSITIVE ON AN INITIAL TEST, THE JUVENILE SHOULD HAVE THE OPTION TO CHALLENGE THE TEST RESULT WITH A GC/MS CONFIRMATORY TEST, AT HIS OR HER EXPENSE, WITHIN 30 DAYS OF TESTING POSITIVE.

Commentary: Upon an initial positive test result, the officer should inform the juvenile that he or she has 30 days to request a confirmation test, after which he or she will be presumed to be guilty of drug use. (See Positive Drug Test Statement Form, Appendix B, Attachment 9.) If the juvenile requests a confirmation test, specimens should be submitted by the agency to an agency-approved laboratory. The agency should pay for the confirmatory test if the test result is negative or if the juvenile is unable to pay for the test due to indigence. This guideline is particularly relevant whenever agency policy concerning the use of sanctions is involved. It may be irrelevant to confirm if the agency does not apply sanctions for a particular positive test.

If the agency is conducting initial screens, it must make certain that whenever a specimen is sent for confirmation the tests conducted by the confirmation laboratory must use a cutoff level below the cutoff level of the initial test.

6–5. WHETHER CONFIRMATION IS REQUIRED BY THE COURTS IN THAT JURISDICTION OR NOT, THE SPECIMEN SHOULD BE DIRECTED TO AN INDEPENDENT LABORATORY WHICH THE PROBATIONER OR PAROLEE WISHES TO USE TO VERIFY THE INITIAL TEST BY GC/MS.

Commentary: Current case law gives probationers and parolees the right to verify test results. In one case, the court said that when a timely request is made by defense counsel for the production of an existing specimen for an independent test, the request must be honored. Failure to do so might violate the offender's right to due process, *State v. Quelnan,* 767 P.2d. 243 (Hawaii Sup. 1989). This guideline should not be interpreted to mean that the agency should freely hand the specimen over to the offender. The agency is responsible for ensuring the integrity and chain of custody of the specimen.

6–6. JUVENILE PROBATION AND PAROLE AGENCIES SHOULD PREPARE A LIST OF APPROVED INDEPENDENT LABORATORIES FOR THOSE JUVENILES ELECTING TO CHALLENGE POSITIVE TEST RESULTS WITH GC/MS CONFIRMATION.

Commentary: The agency should have a list of independent laboratories where the specimen can be retested for the juvenile. This eliminates the problem of the juvenile having the specimen retested by a laboratory whose practices and procedures may not meet agency standards. Confirmation tests initiated by the agency are, of course, at the agency's expense. This information should be included in the materials reviewed with the juvenile.

6–7. THE AGENCY SHOULD USE GC/MS CONFIRMATION WHEN A JUVENILE DENIES USE, WHEN THERE IS A DISCREPANCY IN INITIAL TEST RESULTS, OR WHEN THE RESULTS ARE USED AS THE PRIMARY EVIDENCE IN A DISPOSITIONAL HEARING WHICH COULD RESULT IN REMOVING THE JUVENILE FROM THE COMMUNITY SETTING.

Commentary: APPA recognizes that GC/MS is the most reliable and defensible method of confirmation. As described earlier, other confirmatory options are acceptable when using test results for identification, treatment monitoring, and minor inhouse disciplinary actions. However, it is seen as the ethical responsibility of the agency to provide GC/MS certainty when the juvenile's loss of freedom is at stake.

6–8. WHEN A POSITIVE AMPHETAMINE RESULT IS USED FOR DISCIPLINARY ACTION OF ANY KIND, A GC/MS CONFIRMATION IS NEEDED IF THE JUVENILE DENIES USE.

Commentary: Because cross-reactivity has been a recurring problem when testing for amphetamines, a GC/MS confirmation is needed to take disciplinary action of any kind. Some testing methodologies are more likely to experience this problem, and agencies should have an understanding of the weaknesses in their system.

6–9. CONFIRMATORY TEST CUTOFF LEVELS SHOULD COMPLY WITH THE RECOMMENDED CUTOFF LEVELS OF THESE GUIDELINES (SEE SECTION 7–6 ON CUTOFF LEVELS).

6–10. AN ONSITE POSITIVE TEST RESULT WHICH IS SENT TO AN OFFSITE LABORATORY FOR A GC/MS CONFIRMATION SHOULD HAVE UNDISPUTED ACCESS TO GC/MS CONFIRMATION AT CUTOFF LEVELS LOWER THAN THE INITIAL ONSITE TEST, REGARDLESS OF THE RESULTS OF ANY INITIAL SCREEN PERFORMED BY THE OFFSITE LABORATORY.

Commentary: It is a common practice among offsite laboratories to rescreen positive specimens identified through agency onsite testing. This practice frequently occurs when an agency requests a GC/MS confirmation for a positive screen identified by agency onsite testing. The practice of rescreening may increase the cost of the contracted services; however, many laboratories will insist on this practice because of certification requirements or legal defensibility that they must rescreen on their initial instrument.

In such a case, the agency should insist on GC/MS confirmation even if the laboratory's initial screen of the specimen is negative. The onsite instrument's initial test may have been more sensitive than the offsite laboratory's initial test, and an agency needs the GC/MS confirmation to better establish the credibility of its testing program.

6–11. ALL SPECIMENS THAT SCREEN POSITIVE ON AN INITIAL SCREEN BUT FAIL TO CONFIRM BY GC/MS SHOULD BE DECLARED NEGATIVE AND SHOULD BE TREATED THE SAME AS SPECIMENS THAT SCREEN NEGATIVE.

Confirmation Methods

6–12. IF CONFIRMATION OF A RESULT IS REQUIRED, OR IF THE AGENCY DECIDES TO CONFIRM, THE AGENCY SHOULD USE THE MOST RELIABLE AND DEFENSIBLE METHOD OF CONFIRMATION.

Commentary: An article in the *Journal of the American Medical Association* reports as follows:

Two multiple-procedure test methods, EMIT(*)-GC/MS and RIA-GC/MS, are rated as fully defensible against legal challenge, with TLC-GC/MS falling just slightly below defensible. When asked to rate the most defensible single-procedure method, 24 out of 25 respondents chose GC/MS. Several respondents cited GC/MS when used in modes of operation other than monitoring, such as the full scan mode. Enzyme multiplied immunoassay technique was chosen as the least defensible single-procedure method by 16 of the respondents, with TLC and RIA each chosen least defensible by 6. Gas chromatography and "any single procedure method" were also cited as the least defensible. (David W. Hoyt et al. "Drug Testing in the Workplace: Are Methods Legally Defensible? A Survey of Experts, Arbitrators, and Testing Laboratories," *The Journal of the American Medical Association*, July 24/31, 1987, pp. 506-507.)

Some courts have accepted double EMIT(*) test results as sufficient for confirmation in the prison setting. There are no cases on other tests explicitly addressing the same issue. However, whenever an offender's freedom is involved, as in a violation hearing, GC/MS should be the method of choice.

6–13. JUVENILE PROBATION AND PAROLE AGENCIES SHOULD NOT ALLOW POSITIVE SPECIMENS TO BE CONFIRMED BY METHODOLOGIES THAT HAVE HIGHER DRUG TESTING CUTOFF LEVELS THAN THE INITIAL TESTING METHODOLOGY.

CUTOFF LEVELS

Juvenile probation and parole agencies are currently using a variety of cutoff levels in their drug testing programs. The lack of a consistent set of recommended cutoff levels makes them more difficult to defend in court. Several considerations must be undertaken to determine the most appropriate cutoff levels for criminal justice testing.

It is important that juvenile probation and parole agencies involved with testing know the definition of cutoff levels and understand their significance for a drug testing program. The cutoff level is the value chosen for the determination of a positive or negative in a drug screen. This is not the same as the sensitivity of the drug testing methodology, which refers to the range in which a methodology can detect the presence of a drug or drug metabolite. The manufacturer makes the determination at what value(s) the cutoff level can be set for a particular methodology. Extreme care must be used in setting these values to prevent pushing the technology beyond its capability in accurately and reliably detecting drugs or drug metabolites.

There is substantial controversy within the drug testing community regarding the best cutoff levels to use for certain drugs. Because this issue is so critical, the National Institute on Drug Abuse (NIDA) spent considerable time determining the most suitable and defensible cutoff levels for workplace testing. NIDA will continue to evaluate these levels based upon research findings and technological advances that support lower cutoff levels for certain drugs.

To determine the best cutoff levels to use in criminal justice drug testing, attention must be given to the following items:

- The legal precedence.
- The existing clinical standards.
- The purpose and use of test results.
- The levels of expertise of criminal justice personnel and judges concerning drug testing technology.
- The ethical responsibility to prevent misuse of results due to the preference in some jurisdictions for using single results.
- The reliance by some jurisdictions on using drug testing as a primary revocation aid rather than as a management tool.

A primary goal for criminal justice drug testing is to establish a credible system. In order to organize a defensible and credible system, the safest levels to adopt are those used by NIDA. Although these levels were set for workplace testing, they are currently the most appropriate standards applicable to criminal justice drug testing. Nevertheless, several technologies are available to the criminal justice market which use cutoff levels lower than the NIDA limits. It is important that probation and parole agencies understand the risks involved and possible tradeoffs which accompany both options.

To fully appreciate a comparison of these different cutoff level systems, authorities need to understand what is meant by false positives, false negatives, true positives, and true negatives. A false positive occurs when a test result reports that a drug or drug metabolite has been detected when it is *not* present in the specimen. A false negative occurs when a test result reports that no drug or drug metabolite has been detected when it is present in the specimen. Accuracy in drug testing presumes that a urine specimen provided by an offender is an unadulterated specimen actually voided by that offender. The following chart is presented for clarification:

- Drug *was* consumed. Urine specimen tests positive. — *TRUE POSITIVE
- Drug *was not* consumed. Urine specimen tests negative. — *TRUE NEGATIVE
- Drug *was* consumed. Urine specimen tests negative. — *FALSE NEGATIVE

- Drug *was not* consumed. Urine specimen tests positive. *FALSE POSITIVE

Agencies must decide either to accept the NIDA cutoff levels or to use levels lower or more stringent than the NIDA guidelines advocate. The justification for using lower cutoff levels than those adopted by NIDA is that only the lower levels provide an accurate identification of the true extent of the drug abuse from a selected population. More true positives will be reported with systems using cutoff levels below NIDA's. This increase in true positives would have been reported as negative (false negative) by systems using NIDA cutoff levels. The emphasis is on the potential of such a system to eliminate false negatives, thus providing more credibility to a criminal justice drug testing program.

Agencies that use a drug testing system with NIDA cutoff levels maintain that, while there may be an increase in the number of true positives detected when using lower cutoff levels, there is an increase in the occurrence of false positives. NIDA cutoff levels will err more on the side of false negatives than false positives. Advocates of this approach contend that the majority of drug users eventually will be apprehended at these levels and that increasing the frequency of testing is a safer approach to determining drug use than lowering cutoff levels. Additionally, there are other indicators of drug use which an officer may notice while supervising an offender.

APPA evaluated all of these factors before endorsing the following guidelines. While the debate surrounding cutoff levels will probably continue for as long as this market continues, it was necessary to decide on the best practices which will provide consistency for drug testing within the criminal justice system. The following guidelines on cutoff levels apply to all criminal justice testing sites including contracted laboratories and onsite testing.

7–1. NO CUTOFF LEVELS HIGHER THAN NIDA'S SHOULD BE USED FOR EITHER INITIAL OR CONFIRMATORY TESTS FOR THE FIVE DRUG CLASSES IDENTIFIED BY NIDA.

Commentary: Some probation or parole agencies may have decided to use higher cutoffs than those recommended, due to costs. Many agencies currently use inadvisably high cutoff levels. This results in failure to detect drug use and leads to severe problems when results are challenged in administrative or judicial proceedings. Use of high cutoffs invariably results in a series of positive and negative results for a single offender. This inconsistency gives the incorrect impression that the testing is unreliable or inaccurate. When cost constraints preclude testing at the recommended cutoff levels, the agency should explore such alternatives as less frequent or more random testing before using inadvisably high cutoff levels.

7–2. THE NIDA CUTOFF LEVELS ARE PREFERRED FOR INITIAL TESTING AT ANY SITE FOR THE FIVE DRUG CLASSES ADDRESSED BY NIDA.

Commentary: APPA supports the NIDA cutoff levels primarily because these levels have been set to avoid false positives. In using drug testing in the criminal justice field, false negative results do not raise any legal issues. A constitutional due process (fundamental fairness) issue arises in association with false positives. In the criminal justice setting, there exists a heavy reliance upon the use of initial results for offender management purposes. Therefore, there is a greater potential for misuse or mistreatment of an offender in the event of a false positive. The following initial cutoff levels should be used when screening specimens for these five drugs or classes of drugs:

	initial test levels (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	300*
Phencyclidine	25
Amphetamines	1,000

*25 ng/ml if immunoassay specific for free morphine.

7–3. WHEN USING NIDA CUTOFF LEVELS ON AN INITIAL SCREEN, ALL CONFIRMATORY OPTIONS DISCUSSED IN GUIDELINE 6-1 ARE APPLICABLE.

Commentary: One of the main reasons for the preference of NIDA cutoff levels is because probation and parole agencies often have some discretion regarding confirmatory practices.

7–4. WHEN USING TESTING SYSTEMS WITH CUTOFF LEVELS LOWER THAN NIDA ON AN INITIAL SCREEN, CUTOFFS MUST BE USED OR SET AT LEVELS WHICH THE MANUFACTURER WILL LEGALLY DEFEND FOR THE FIVE DRUG CLASSES ADDRESSED BY NIDA.

Commentary: In these circumstances, the following conditions should apply:

- The confirmatory options 2 and 3 of Guideline 6–1 are not acceptable options for these systems.
- The GC/MS confirmation of positives must be done before any punitive action against the offender is taken.
- The agency must explain why it wants to use lower cutoffs in its drug testing policy.

It is recognized that systems using lower cutoff levels than NIDA have certain benefits, such as an increase in true positives identified or treatment monitoring use versus revocation aid. Probation and parole agencies should only use these systems if they are used correctly and an agency's program can take advantage of the benefits. However, because of the potential increase in the misuse of these results, the agency will be more limited in leniency regarding confirmatory practices. Therefore, the agency must be certain the manufacturer will defend its use of cutoff levels in the event of court proceedings.

7–5. CUTOFF LEVELS FOR CANNABINOIDS SHOULD NEVER BE SET LOWER THAN 50 NG/ML ON THE INITIAL TEST AND 15 NG/ML ON THE GC/MS CONFIRMATION TEST.

Commentary: Current data indicate that lowering the above cutoffs for cannabinoids will increase by less than 10 percent the number of positives identified. If detecting this additional 10 percent of drug use is considered critical, the agency should explore the alternatives of more frequent or random testing before using inadvisably low cutoffs.

7–6. THE GC/MS CONFIRMATION CUTOFF LEVEL SHOULD BE LOWER THAN THE INITIAL SCREENING CUTOFF LEVEL. THE RECOMMENDED LEVELS INCLUDE THE FOLLOWING:

■ COCAINE	150 NG/ML
■ OPIATES	300 NG/ML
■ AMPHETAMINES	500 NG/ML
■ CANNABINOIDS	15 NG/ML
■ PCP	25 NG/ML
■ BENZODIAZEPINES	250 NG/ML
■ BARBITURATES	250 NG/ML
■ METHADONE	250 NG/ML

Commentary: The sensitivity of the GC/MS should be compatible with the initial test because if the initial immunoassay is more sensitive it is often lost because it will not get GC/MS consideration. The lower limits for the GC/MS are required because certain initial screening instruments will identify several different metabolites in detecting drug use, whereas the GC/MS will be specific for one metabolite. In addition, even when the specimen is handled and stored correctly, metabolites will deteriorate over time. The above guideline provides support to systems that use either the NIDA initial cutoffs or those using lower cutoffs.

7–7. IF NIDA OFFICIALLY CHANGES ITS CUTOFF LEVELS, THE APPA GUIDELINES WILL ADOPT THE NEW NIDA LEVELS.

Commentary: Due to current research findings and advanced technologies, NIDA may decide it can safely adjust its levels to more accurately identify drug use. Because of NIDA's thoroughness in examining all of the issues surrounding cutoff levels, APPA is supportive of making adjustments to reflect any future NIDA changes in the cutoff level area.

7–8. CUTOFF LEVELS FOR THE INITIAL IMMUNOASSAY TEST FOR DRUG CLASSES NOT ADDRESSED BY NIDA SHOULD BE SET AS FOLLOWS:

■ BENZODIAZEPINES	300 NG/ML
■ BARBITURATES	300 NG/ML
■ METHADONE	300 NG/ML

7–9. CUTOFF LEVELS FOR ANY OTHER DRUG CLASS NOT ADDRESSED IN THESE GUIDELINES SHOULD BE SET AT LEVELS WHICH ARE LEGALLY DEFENSIBLE.

7–10. THE PRACTICE OF USING UNCONFIRMED SCREEN RESULTS TO INDICATE THE PRESENCE OF A DRUG BELOW THE CUTOFF LEVEL IS PRECARIOUS AND SHOULD NOT BE ALLOWED.

Commentary: All drugs that screen negative on an initial screen should be declared negative. They should never be treated differently based on any characteristic of the screening test results such as semiquantitative numeric information.

JUVENILE SELECTION

The process for selecting a juvenile for drug testing may begin during a predisposition investigation, an intake, or an agency assessment phase. A risk and needs assessment, coupled with other evaluation instruments, will furnish the juvenile court or decision-making authority with pertinent background material about the juvenile. A comprehensive evaluation will provide an agency with the appropriate requisites for developing a case management plan. This information can be made available for the discretionary use of the presiding juvenile judge or parole board to help determine the conditions of probation or parole and placement into a drug testing program. Offense category alone should not determine the necessity for testing. Nondrug offenses may, in fact, be drug related.

A well-developed predisposition investigation, intake, or agency assessment phase will help to ensure that only individuals who are prone to drug use are selected for testing. Additionally, it will reduce the overall cost associated with drug testing by eliminating juveniles who are unlikely to abuse drugs.

There may be circumstances in which juveniles are ordered by judges to participate in a drug testing program without the benefit of a formal evaluation process. A judge will often consider the juvenile's drug history, documented current drug habits, and offense record when evaluating the potential risk of a juvenile to the community. Assessments or reassessments may occur at any time during the supervision period. Such reassessments may lead to the modification of drug testing requirements.

Predisposition Investigation, Intake, or Agency Assessment Phase

8–1. A WRITTEN POLICY SHOULD ESTABLISH THE CRITERIA FOR SELECTION OF JUVENILES FOR DRUG TESTING.

8–2. DRUG TESTING SHOULD BE CONDUCTED DURING THE PREDISPOSITION INVESTIGATION, INTAKE, OR AGENCY ASSESSMENT PHASE WHEN THE JUVENILE HAS A HISTORY OF DRUG INVOLVEMENT.

Commentary: The argument may also be made that assessment testing of those with no known history of drug abuse might be a good use of agency drug testing resources.

8–3. DURING THIS PHASE, A FULL DRUG SCREEN SHOULD BE CONDUCTED TO DETERMINE THE JUVENILE'S DRUG(S) OF CHOICE.

Commentary: This initial test should be a full drug screen to determine the primary drugs of choice currently used by the juvenile population within the agency's jurisdiction. It is incumbent upon each agency to determine which drugs to include in the full drug screen. When testing is conducted following sentencing, it should be done within 30 days to establish a baseline for additional testing.

Results of the initial full drug screen should be used to determine which categories of illegal drugs a juvenile is most likely to use. For example, if the juvenile tests positive for amphetamines and negative for the other categories of drugs, then future random drug screens should be limited to amphetamine-type drugs. However, juveniles will switch drugs in an attempt to avoid detection, or the drug of choice may not be locally available. Therefore, the full drug screen will need to be used periodically. Limiting the number of different categories of drugs to be tested is an important means of controlling costs.

8–4. RESULTS OBTAINED FROM AN INITIAL FULL SCREEN SHOULD BE USED TO ASSIST IN DEVELOPING AN APPROPRIATE LEVEL OF SUPERVISION (HIGH, MEDIUM, LOW CONTACT) AND AN APPROPRIATE DRUG TESTING SCHEDULE.

Commentary: Subsequent partial drug screens, conducted on a random schedule, should be performed on every juvenile who has tested positive on the initial tests.

The frequency of screening should be based on the juvenile's drug use history and the juvenile's potential criminal impact on the community. If the juvenile is found to have a positive specimen, more frequent random screenings should be conducted after confrontation. Positive results used in conjunction with other evidence may be used to determine the frequency of screening.

8–5. JUVENILES WHO ADMIT TO ABUSING ILLEGAL DRUGS SHOULD BE TESTED.

Commentary: A detailed description of the frequency and type of drug use involved and the signature of the juvenile on a standard admission form should be obtained.

Condition of Probation or Parole

8–6. DRUG TESTING SHOULD BE IMPOSED AS A CONDITION OF PROBATION OR PAROLE WHEN THE PREDISPOSITION INVESTIGATION, INTAKE, OR AGENCY ASSESSMENT PHASE SUBSTANTIATES PRIOR USE OF ILLEGAL DRUGS OR PRIOR ARRESTS RELATING TO THE USE OR SALE OF ILLEGAL DRUGS.

Commentary: In the aggregate, decided cases indicate that there are four general requirements for the validity of probation and parole conditions. These are:

1. The condition must be constitutional.
2. The condition must be clear.
3. The condition must be reasonable.
4. The condition must be reasonably related to the protection of society or the rehabilitation of the juvenile.

Court cases challenging the legality of drug testing as a condition of probation have been decided in accordance with these principles.

Drug-Free Juveniles

8–7. JUVENILES EVALUATED DURING PREDISPOSITION INVESTIGATION, INTAKE, OR AGENCY ASSESSMENT PHASE AS HAVING LITTLE OR NO RISK OF USING ILLEGAL DRUGS SHOULD NOT BE TESTED ON A FREQUENT BASIS UNLESS EXIGENT CIRCUMSTANCES ARISE.

Exigent Circumstances

The following guidelines relate to circumstances which may occur outside of normal testing practices.

8–8. A JUVENILE SUSPECTED OF BEING UNDER THE INFLUENCE OF ILLEGAL DRUGS SHOULD ALWAYS BE TESTED.

Commentary: An officer may determine use of illegal drugs through observation of physical or behavioral characteristics. Collateral information may also be used in making a determination to conduct a drug test.

8–9. A JUVENILE ARRESTED FOR A NEW DRUG RELATED OFFENSE SHOULD ALWAYS BE TESTED AS SOON AS POSSIBLE AFTER NOTIFICATION OF THE ARREST.

Commentary: A juvenile on probation or parole who has not been tested previously should be tested immediately after an arrest. Officers should seek a court order or other authorization to ensure prompt action.

8–10. A JUVENILE SHOULD BE TESTED WHEN IN POSSESSION OF ILLICIT DRUGS OR WHEN SUSPECTED ILLICIT DRUGS ARE DISCOVERED IN AN AREA CONTROLLED, OCCUPIED, OR INHABITED BY A JUVENILE.

8–11. DRUG TESTING SHOULD BE CONDUCTED WHEN PATTERNS DEVELOP WHICH INDICATE DRUG USE.

Commentary: The officer should seek a court order to test as soon as drug use by such a juvenile is indicated. Testing a juvenile for drugs in this sequence may be considered a progressive sanction. Subsequent to an initial determination that a juvenile is drug free, patterns may develop which necessitate the imposition of drug testing. Under these circumstances, the agency should seek a court order to initiate testing.

8–12. PARENTS OF JUVENILES SELECTED TO BE TESTED SHOULD BE INFORMED OF THE DRUG TESTING PROGRAM AND OF THE SELECTION OF THEIR CHILD FOR PARTICIPATION IN THE PROGRAM.

Commentary: Jurisdictional differences in the need for parental consent or cooperation should be addressed in the policy and procedures manual. The role of the parents in the treatment plan should be clearly stated, communicated in writing, and discussed verbally with parents and juveniles.

Screening Special Needs Juveniles

8–13. AGENCIES SHOULD DEVELOP POLICIES AND PROCEDURES FOR CONDUCTING DRUG TESTING OF SPECIAL POPULATIONS WITHIN JUVENILE PROBATION AND PAROLE.

Commentary: Some juveniles may have mental illnesses that are not severe enough to require hospitalization. Many of these juveniles may be on medication to treat their condition. Borderline mentally retarded juveniles may also be on medications. It is important that these juveniles are routinely monitored to ensure that they stay on their prescribed medication. Nevertheless, there are juveniles with special needs who are also illicit drug abusers. Their drug use may worsen or exaggerate their existing condition. It is critical that these people be effectively monitored through drug testing.

DRUG TESTING PROTOCOL

Scheduling Juveniles for Testing

9–1. AGENCIES CONDUCTING DRUG TESTING SHOULD DETERMINE FOR EACH JUVENILE WHETHER THE COLLECTION OF SPECIMENS WILL BE UNSCHEDULED, SCHEDULED, OR A COMBINATION OF UNSCHEDULED AND SCHEDULED.

Commentary: The advantages to unscheduled collections include the following:

- The juveniles are required to provide a specimen on notice.
- The juveniles have reduced ability to schedule their drug use so as to avoid detection.
- The rate of specimen collection averages can be lowered, allowing for considerable cost reductions.

The advantages to scheduled collections include the following:

- The scheduled collections are less confusing to juveniles than unscheduled collections.
- The juveniles receive specific dates and times to provide specimens for testing.
- The scheduled collections are easier for staff to organize and maintain.

The greatest weakness of scheduled collections is that juveniles may also schedule their drug use to escape detection. Effective monitoring using this method would require specimens to be collected three times a week.

9–2. AGENCIES SHOULD DEVELOP A PROCESS TO ENSURE RANDOM SELECTION FOR JUVENILES TESTED ON AN UNSCHEDULED BASIS.

Commentary: Agencies electing to conduct unscheduled collections may want to use color codes, identification numbers, or other means to determine how individuals or groups should be tested. These methods will ensure that the desired level of testing is maintained. For example, juveniles on an unscheduled testing sequence requiring four specimens per month must be tested four times in such a manner that they cannot decipher the system.

Notification

9–3. AGENCIES SHOULD REQUIRE JUVENILES TO REPORT TO THE COLLECTION SITE WITHIN 24 HOURS AFTER BEING NOTIFIED.

Commentary: A period longer than 24 hours will allow the juvenile to take the precautions necessary to produce a clean specimen, even though the juvenile is using drugs.

Transporting Specimens

9–4. AGENCIES SHOULD DEVELOP SPECIFIC PROCEDURES FOR PACKING AND TRANSPORTING SPECIMENS TO THE TEST SITE.

Commentary: Specimen identification labels should be matched with a shipping invoice as each specimen is placed into a locked shipping box. Every shipping container opening should be securely taped and signed by a staff member or a courier to ensure that the seal cannot be removed without detection. The testing site or offsite laboratory should be supplied with a list of acceptable signatures. Upon receipt of specimens, the laboratory should employ the appropriate chain of custody procedures described in the guidelines.

Full and Partial Drug Screens

9–5. AGENCIES SHOULD DEVELOP SPECIFIC PROCEDURES DETAILING WHAT CONSTITUTES A FULL DRUG SCREEN AND A PARTIAL DRUG SCREEN, AND DESCRIBE WHEN AND UNDER WHAT CONDITIONS EACH SCREEN SHOULD BE USED.

Commentary: Program developers should decide the number and types of drugs to be tested for in the full drug screen. Full drug screens usually include five to seven categories. Some agencies may opt to conduct a full drug screen initially and then select which drugs to test for on a case by case basis. Other agencies may choose to focus on a particular drug or group of drugs based on current experience or information and use full screens only occasionally, such as when they suspect the juvenile of multiple or unidentified drug use.

INSTRUCTIONS TO JUVENILES

Due process requires that juveniles are properly notified of drug testing policies and procedures prior to drug testing. In the interest of fundamental fairness, a juvenile must know the procedures and potential consequences of any drug testing program. Juvenile notification procedures also help to avoid inconsistencies and minimize the potential for abuse, which are both due process concerns.

10–1. THE OFFICER MUST EXPLAIN TO THE JUVENILE WHY HE OR SHE WAS SELECTED FOR DRUG TESTING.

Commentary: Appropriate justification may include:

- The juvenile's history of drug use.
- The juvenile's previous positive test result.
- The juvenile's rearrest for a drug related offense.
- The suspicion that the juvenile is intoxicated or has an acute hangover.
- The serious emotional disruption coupled with other indicators such as:
  - Mood swings.
  - Needle marks.
  - Rapid weight loss.
  - Chronic runny nose.
  - Reliable information that the juvenile is using drugs.

10–2. JUVENILE PROBATION AND PAROLE AGENCIES SHOULD PROVIDE EACH JUVENILE SELECTED FOR DRUG TESTING WITH A HANDBOOK CONTAINING SPECIFIC INFORMATION RELEVANT TO THE BASIC RULES AND REGULATIONS PERTINENT TO PARTICIPATION IN THE DRUG TESTING PROGRAM.

Commentary: Information contained in the juvenile handbook should be clear and specific and should be updated periodically as procedures change. It should be given and explained to every juvenile at the start of the probation or parole term. In areas where languages other than English are widely used, the agency should attempt to produce this material in those languages. A map with the address of and directions to the location of the collection site should be included.

10–3. OFFICERS SHOULD REVIEW INFORMATION CONTAINED IN THE HANDBOOK WITH THE JUVENILE.

Commentary: This information should be furnished by the agency and given to the juvenile as soon as possible. Probationers and parolees should read the material thoroughly and make sure that they comprehend it. Officers should make sure that this information is understood by the juvenile. If the individual is unable to read, the officer should read the procedures to the juvenile to be sure the material is understood.

The agency should require the juvenile to sign a statement declaring that:

- The officer reviewed the handbook with the juvenile.
- The juvenile comprehends the material reviewed in the handbook.

10–4. THE JUVENILE SHOULD BE INFORMED IN WRITING HOW DRUG TEST RESULTS WILL BE USED, WHO WILL RECEIVE THE TEST RESULT INFORMATION, AND THE CONSEQUENCES OF EITHER A POSITIVE RESULT OR A REFUSAL TO TEST.

Commentary: This information should be included in the materials reviewed with the juvenile at the start of the probation or parole term. It is essential for juveniles to comprehend these issues—especially the consequences of positive test results. The handbook should explain how the test will be conducted and what sanctions may be imposed due to positive test results.

10–5. THE JUVENILE SHOULD BE INFORMED IN WRITING THAT A POSITIVE DRUG TEST IS A VIOLATION OF PROBATION OR PAROLE AND THAT RESULTS WILL BE REPORTED TO THE JUVENILE COURT OR PAROLE BOARD AND MAY RESULT IN REVOCATION OF THE JUVENILE'S PROBATION OR PAROLE.

Commentary: The Constitution protects the juvenile from testimonial self-incrimination, but not physical self-incrimination. Requiring a juvenile to submit to drug testing is physical self-incrimination. An accused can be compelled to appear in a lineup, give fingerprints, or furnish handwriting exemplars because these are also forms of physical self-incrimination. While results obtained from drug testing may indicate drug use and therefore incriminate the user, the test itself does not require the juvenile to admit or confess guilt verbally, and it is only verbal self-incrimination that is prohibited by the Constitution.

Court cases have held that a judge need only be "reasonably satisfied" that a violation has occurred to justify revocation. A positive drug test result more than meets that standard, provided the result is proven reliable.

10–6. THE JUVENILE SHOULD BE INFORMED IN WRITING THAT FAILURE OR REFUSAL TO COOPERATE BY PROVIDING A URINE SPECIMEN WITHIN A REASONABLE TIME PERIOD IS A VIOLATION. THAT VIOLATION WILL BE REPORTED TO THE COURT OR PAROLE BOARD AND MAY RESULT IN REVOCATION OR OTHER ADMINISTRATIVE SANCTIONS.

Commentary: Although the courts have not addressed this issue directly, the stipulation is likely to be upheld as valid to ensure the meaningfulness of the drug testing requirement. Failure to uphold the stipulation would result in the subversion of the drug testing requirement by the failure or refusal of juveniles to comply. Refusal to be monitored is in itself an indication of a violation of probation or parole conditions. The time the juvenile is given to furnish the specimen depends upon agency policy based on reasonableness. A few hours of grace would most likely be considered reasonable by the court. During that time, however, the juvenile must not be allowed to leave, otherwise the possibility of evasion or adulteration becomes a problem.

10–7. THE JUVENILE SHOULD BE INFORMED IN WRITING OF RESTRICTIONS FROM ANY KNOWN SUBSTANCES, SUCH AS POPPY SEEDS OR VICKS INHALERS, WHICH MAY CROSS-REACT WITH CERTAIN DRUG ASSAYS USED BY THE AGENCY.

Commentary: In the initial instructions, juveniles should be made aware of any substances they need to refrain from using because of cross-reactivity problems. They should sign in writing a statement of their awareness of these restrictions, thereby acknowledging understanding that future positive screens cannot be blamed on these restricted substances.

10–8. THE JUVENILE SHOULD BE MADE TO SIGN A STATEMENT DECLARING COMPREHENSION OF THE DRUG TESTING PROCEDURE AND THE CONSEQUENCES OF A POSITIVE DRUG TEST OR A REFUSAL TO TAKE THE TEST.

Commentary: It is recommended that information in the handbook be discussed with the juvenile and a signature obtained for the case records, verifying the juvenile's understanding of the instructions. A signed copy of these instructions should be given to the juvenile. Obtaining a signature on this statement should not be optional. This should be a standard requirement in agencies that administer the drug test. It should not be assumed that because drug testing is imposed as a condition, the procedures and consequences are automatically deemed known and accepted by the juvenile. When a juvenile signs a statement, the agency is in a strong legal position if a test's procedure and consequences are later challenged in court. Signing a statement may be part of the process of providing and explaining the handbook to each juvenile.

Medical Information

10–9. JUVENILES SHOULD BE REQUIRED TO FURNISH VERIFICATION FROM THEIR PHYSICIAN FOR ANY PRESCRIBED MEDICATION IN ADVANCE OF TESTING.

Commentary: During agency intake, juveniles should furnish the agency with a complete list of prescription and nonprescription drugs currently being used. The juvenile should sign and date the list. Juveniles should be encouraged to inform their physician of prior or current drug problems. A copy of this list should be delivered to the juvenile's physician.

10–10. DOCUMENTATION SHOULD BE OBTAINED WHEN MEDICAL TREATMENT OR DRUG THERAPY IS ORDERED WHILE A JUVENILE IS PARTICIPATING IN A DRUG TREATMENT PROGRAM.

Commentary: Pertinent medical documentation should be entered into the juvenile's case file. Notation of telephone conversations with the juvenile's physician should include the date, name of physician, and any specific relevant case information discussed. Letters from the physician prescribing drug therapy and from the agency providing drug treatment should become part of the case file.

10–11. OFFICERS SHOULD REVIEW DRUGS OR OVER-THE-COUNTER MEDICINE WITH THE JUVENILE AND RECORD THE SUBSTANCE, TIME, AND AMOUNT OF THE LAST DOSAGE PRIOR TO EACH SPECIMEN COLLECTION. (SEE APPENDIX B, ATTACHMENT 4)

Commentary: The juvenile should be asked if there has been any drug usage, including prescription, over-the-counter, nonprescription, or illicit drug usage. Many medications will affect the outcome of a urine drug test. Laboratory personnel need this information before publishing the test results.

10–12. TO REDUCE CLAIMS OF CROSS REACTIONS, JUVENILES SHOULD BE ASKED TO FILL OUT A FORM INDICATING ANY MEDICATIONS THEY ARE TAKING PRIOR TO SUBMITTING A URINE SPECIMEN.

Commentary: Claims of cross reactions have not fared well in courts, nonetheless this is a precaution that must be taken.

10–13. AGENCY PERSONNEL SHOULD CONFIRM PRESCRIPTION MEDICATIONS AND NOTE THOSE DRUGS ON THE REQUEST FORM WHICH ACCOMPANIES THE URINE SPECIMEN FOR ANALYSIS.

AGENCY COLLECTION SITES

11–1. EACH OFFICE OR FACILITY CONDUCTING DRUG TESTING SHOULD DESIGNATE A COLLECTION SITE THAT HAS NECESSARY MATERIALS AND EQUIPMENT FOR COLLECTION, SECURITY, TEMPORARY STORAGE, AND TRANSPORTATION OF URINE SPECIMENS.

Commentary: The designation of a collection site ensures that there is uniformity in procedure and that there are trained personnel collecting the specimens. It also makes it easier to establish proper chain of custody procedures, should such be questioned, particularly if the procedures are prescribed, routine, and strictly observed.

This collection site should not be used by staff or the general public. If private facilities are unavailable and public lavatories must be used, every reasonable effort should be made to reduce the possibility of interference with the collection process or the adulteration of the collected specimen.

11–2. UNAUTHORIZED PERSONNEL SHOULD NOT BE PERMITTED IN ANY PART OF THE DESIGNATED COLLECTION SITE WHERE URINE SPECIMENS ARE COLLECTED.

Commentary: Sites should be closed to anyone not directly involved in the specimen collection process during collection periods. The agency may want to develop this guideline further and to specifically list the individuals who will have access to the collection site.

11–3. EVERY AGENCY THAT COLLECTS SPECIMENS SHOULD DESIGNATE AN INDIVIDUAL AS AN ONSITE DRUG TESTING SPECIALIST.

Commentary: The responsibilities of the drug testing specialist should include, but are not limited to:

- Maintaining a drug testing control log.
- Maintaining documentation of urine specimen results.
- Directing and monitoring the collection of urine specimens.
- Establishing and setting conditions and controls for the onsite storage of specimens.
- Overseeing the transfer of urine specimens to a drug testing laboratory.
- Maintaining secure storage conditions for unused containers.
- Ensuring the availability of sufficient supplies for the uniform collection of urine specimens.
- Ensuring that officers conform to the documentation guidelines outlined in the chain of custody procedures.
- Ensuring that officers and drug testing staff are thoroughly trained in:
  - ☐ Specimen collection.
  - ☐ Container labeling.
  - ☐ Specimen transportation.
  - ☐ Storage security.

CHAIN OF CUSTODY

"Chain of custody" refers to the accountability one has for evidence presented in court, from the moment the evidence is obtained, until the time when it is offered in court. The chain of custody requirement ensures that the specimen obtained from the juvenile is the same specimen that is tested and that the test result is what is presented later as evidence in court. Chain of custody involves issues of due process, meaning fairness to the tested juvenile and making sure there are no specimen substitutions or custodial carelessness compromising the integrity of the process.

Chain of custody deals with:

- Proper specimen handling and identification.
- Proper documentation describing how the specimen was handled and tested and how the results were presented in court.

Any flaws are from human error instead of technological imperfection. Unless the chain of custody is properly established, the evidence will not be admissible in court. The burden of establishing the proper chain of custody lies with the party presenting the evidence. In the case of drug testing, this would be the agency. Chain of custody forms should remain at the test site with the rest of the data, including chain of custody documents necessary to support test results. Copies of the chain of custody documents should be made available to the appropriate agency staff.

It is imperative that rigorous chain of custody procedures be implemented as part of an agency drug testing strategy. Records should document who has handled each specimen from the time it was provided until the test results are introduced as evidence into court. The specimen should never be left unattended unless it is in a secured facility or container.

12–1. RIGOROUS CHAIN OF CUSTODY PROCEDURES SHOULD BE PRESCRIBED AND IMPLEMENTED AS PART OF THE AGENCY DRUG TESTING STRATEGY.

Commentary: The collection and handling of the urine specimen must be properly performed and documented from the time it is obtained from the juvenile to the presentation of the results as evidence in court. Written chain of custody procedures will ensure that the collection, labeling, transportation, and storage of urine specimens is secure during each step of the entire drug testing process. Agencies choosing to contract for outside laboratory services should make certain that stringent chain of custody procedures are performed by the laboratory selected. Chain of custody procedures should be reviewed and updated at least annually.

This section prescribes procedures that need to be followed by an agency to avoid chain of custody problems. These procedures must be given proper attention, and staff members involved in drug testing must be thoroughly familiar with them. This requires training and constant monitoring by the agency to make sure that these procedures are faithfully followed.

12–2. THE AGENCY SHOULD DEVELOP A CHAIN OF CUSTODY FORM TO BE PROPERLY SIGNED BY EVERY INDIVIDUAL RELEASING AND ACCEPTING THE URINE SPECIMEN.

Commentary: Chain of custody procedures, established within the agency or between the agency and an outside laboratory, for the transportation and analysis of specimens must be strictly observed and followed. Any deviation or difficulty that arises should be immediately reported to the agency administration for review and action. With each transfer of possession, the chain of custody form should be dated and signed by the individual releasing the specimen and by the individual accepting the specimen.

Collecting Specimens

The preparation for specimen collection involves several general duties which are essential for maintaining the integrity of the specimen. The actual collection site should be made secure before a juvenile enters.

12–3. PRIOR TO COLLECTING A SPECIMEN, THE SUPERVISING OFFICER SHOULD COMPLETE THE REQUEST PORTION OF THE CHAIN OF CUSTODY FORM (SEE APPENDIX B, ATTACHMENT 3).

Commentary: If testing is done in the presence of the juvenile, the chain of custody form may not have to be completed for negative specimens or for positives when admissions of use by the juvenile are obtained. Such a practice would need to be defined by policy.

12–4. THE PERSONNEL RESPONSIBLE FOR COLLECTING THE SPECIMEN SHOULD ENSURE THE JUVENILE SUBMITS AN UNADULTERATED SPECIMEN FOR DRUG TESTING.

Commentary: Care must be taken to ensure that the specimen collected has not been tampered with, contaminated, or diluted by the juvenile in the process of giving the urine specimen. Unless the integrity of the specimen collection is protected, the results of the test are misleading and useless to the agency. One writer notes that the urine specimen can be compromised by the specimen giver in a number of ways, such as:

- Individuals have reportedly placed various chemical substances under their fingernails and released them into the urine specimen to affect the subsequent analysis.
- Placing a pinhole in the bottom of the urine container would result in a leak that would not be detected at the collection site. During shipping, most of the urine would leak out.
- Ordinary table salt, detergent, or other commonly available household chemicals can destroy the drug or affect the assay in such a manner as to generate false negative analysis. Frequently, soap dispensers or cleansers in toilet areas offer the opportunity to add effective adulterants to the specimen.
- The use of a fluid-filled bulb placed under the arm with a tube leading to the genital area allows the subject to squeeze the bulb and release water or another substance that would dilute or contaminate his or her urine.
- The subject can obtain urine from friends not using drugs or save his or her own urine from drug free periods. This urine can be placed in the container during the collection period.
- The subject can scoop water from the commode into the collection container and dilute the urine. (Joseph E. Manno, "Specimen Collection and Handling," *Urine Testing for Drugs of Abuse, Research Monograph Series*, National Institute on Drug Abuse, Richard L. Hawkins and Nora Chaing (eds.), 1986, p. 26.) The agency may use bluing agents in the toilet bowl and tank to deter the dilution of specimens at the collection site.

12–5. PROCEDURES FOR THE COLLECTION OF THE URINE SPECIMEN SHOULD GUARD AGAINST SPECIMEN SUBSTITUTION OR DILUTION BUT SHOULD NOT BE UNDULY INTRUSIVE ON THE PRIVACY OF THE JUVENILE.

Commentary: The integrity of the collection process must be preserved and the privacy of the juvenile respected even though he or she is a probationer or parolee. The possibility of contamination or substitution must be minimized, not eliminated. The collection process must not be unnecessarily intrusive or humiliating. In one case, a court said that "the conduct of the search must be no more degrading than is necessary to satisfy the legitimate security interests of the institution. Forcing an inmate to urinate in front of others,* male or female, significantly enhances the humiliating nature of the test," *Storms v. Coughlin*, 699 F. Supp. 1214 (S.D.N.Y. 1984). A balance between some form of individual privacy and nontampering of the specimen must be achieved. This should not prohibit direct observation of the collection process. The procedure for collection found in the chain of custody section of the guidelines must be carefully observed.

---

* "Others" means other juveniles and does not refer to staff who function as witnesses to assure collection of an unadulterated specimen.

12–6. COLLECTION OF THE SPECIMEN SHOULD BE OBSERVED BY A PERSON OF THE SAME GENDER AS THE JUVENILE PROVIDING THE SPECIMEN.

12–7. THE COLLECTION PERSONNEL SHOULD BE ALLOWED TO CONDUCT A SEARCH OF THE JUVENILE'S POSSESSIONS INCLUDING A PAT FRISK, IF DEEMED NECESSARY, TO ASSURE THE PROVISION OF AN UNADULTERATED URINE SPECIMEN.

Commentary: Jackets, purses, and other handheld items should not be allowed in the restroom. Juveniles should be allowed to retain their wallets.

12–8. THE COLLECTION PERSONNEL SHOULD DEMONSTRATE TO THE JUVENILE THAT THE SPECIMEN CONTAINER IS UNADULTERATED PRIOR TO PROVIDING THE SPECIMEN.

Commentary: The officer should make certain the juvenile visually inspects the container to confirm that it is free of adulterants.

12–9. COLLECTORS SHOULD OBSERVE AND COLLECT ONLY ONE SPECIMEN AT A TIME AND SHOULD NOT HAVE GROUPS OF OFFENDERS PROVIDING SPECIMENS SIMULTANEOUSLY.

Commentary: Only one offender and one observer should be in the collection area at the same time. Offenders waiting to void should not be allowed in the collection area. Security is an important part of specimen integrity. This is achieved by having strict regulations excluding unauthorized personnel from areas where specimens are collected and stored.

12–10. OFFICERS SHOULD ASSEMBLE A DRUG TESTING KIT PRIOR TO SPECIMEN COLLECTION.

Commentary: Kits should include the following items:

- Seal.
- Labels.
- Rubber gloves.
- Specimen bottle.
- Information forms.
- Chain of custody forms.
- Mailing containers (if necessary).

12–11. JUVENILE PROBATION AND PAROLE AGENCIES SHOULD DEVELOP A SPECIMEN COLLECTION PROCESS IN WHICH NEITHER THE COLLECTION PERSONNEL NOR THEIR DESIGNEES EVER DIRECTLY TOUCH THE SPECIMEN CONTAINER DURING THE COLLECTION PROCESS.

Commentary: This standard is entered as a precaution to ensure protection from communicable diseases for agency personnel observing the specimen collection. Agency procedures should guarantee the health and safety of the officer. The officer will instruct and observe the juvenile in each step of the labeling process which secures the specimen. After the specimen is secured, the juvenile may place the specimen in a plastic bag for shipment or storage. In the event it becomes necessary for an officer to handle a specimen, protective gloves should be worn.

12–12. THE AGENCY SHOULD ESTABLISH A MINIMUM QUANTITY OF URINE TO CONSTITUTE AN ACCEPTABLE SPECIMEN.

Commentary: Collect enough urine for multiple tests, with margin for error. Sufficient quantity is needed to test the specimen and confirm results, if necessary. Check manufacturers' quantity recommendations.

12–13. THE AGENCY SHOULD ESTABLISH A DESIGNATED PERIOD OF TIME FOR JUVENILES TO SUBMIT A URINE SPECIMEN FOR TESTING.

Commentary: After a reasonable period of time, the juvenile should be informed that refusal to provide a urine specimen constitutes a violation of probation or parole and unless he or she submits a specimen for testing, he or she may be subject to the same penalties that a positive result will support.

12–14. THE OFFICER SHOULD INSTRUCT THE JUVENILE WHO IS UNABLE TO PRODUCE A SPECIMEN IMMEDIATELY TO REMAIN AT THE OFFICE OR COLLECTION SITE UNTIL A SPECIMEN IS RENDERED.

Commentary: Any juvenile unable to provide a urine specimen should not be allowed to leave the immediate area until a specimen is produced. Only a witnessed collection specimen should be accepted and tested. This will reduce the possibility of the juvenile returning with a "clean" urine specimen as a substitute.

12–15. JUVENILES SHOULD NEVER PARTICIPATE IN THE COLLECTION OF ANOTHER SUBJECT'S URINE SPECIMEN OR HAVE ACCESS TO COLLECTED URINE SPECIMENS, DRUG TESTING EQUIPMENT, SUPPLIES, OR DOCUMENTATION.

Chain of Custody Steps

The purpose of chain of custody is to assist juvenile probation and parole agencies in developing rigorous procedures through a chronological listing of the steps to be followed when collecting and testing specimens.

12–16. THE AGENCY SHOULD MAKE A POSITIVE IDENTIFICATION PRIOR TO DIRECTING THE JUVENILE TO PROVIDE A SPECIMEN.

Commentary: Identification of the juvenile is the first step in the chain of custody. Verification by photograph and signature is the best method available. Most States currently use photographs on automobile operators' licenses. Operators' licenses provide additional physical information about the juvenile at no additional cost to the agency. The juvenile probation or parole agency may consider developing an identification system based on a numbering scheme, thereby augmenting the agency's commitment to confidentiality and right to privacy. Social Security numbers, case numbers, date of birth, as well as sequential drug testing numbers are other available options.

If the juvenile does not have proper photo identification, the collection site receptionist should contact the juvenile's officer or someone within the agency to make a positive identification. The agency may consider taking fingerprints when offenders have no identification. If the juvenile's identity cannot be established, the collection site receptionist should not proceed with the collection.

After establishing positive identification, the juvenile should be registered. The juvenile should sign or initial the area next to his or her name. The agency should use the juvenile's name as it appears on the conditions of probation or parole each time a specimen is collected. The juvenile should be instructed to use the same initials whenever and wherever initialing is required. Agency personnel should be certain that the same name is used on forms and labels to avoid confusion.

12–17. COLLECTION PERSONNEL SHOULD ESCORT THE JUVENILE TO A SECURED COLLECTION SITE TO PROVIDE THE URINE SPECIMEN.

Commentary: At this time the juvenile may be instructed to remove any outer garments which might:

- Obstruct the officer's field of vision.
- Be used to adulterate the urine specimen.

12–18. THE COLLECTION PERSONNEL SHOULD INSTRUCT THE JUVENILE TO WASH, RINSE, AND THOROUGHLY DRY HIS OR HER HANDS PRIOR TO PROVIDING A URINE SPECIMEN.

Commentary: The juvenile may attempt to adulterate the specimen by hiding an adulterant under the fingernails or on the skin. The officer should remain in the presence of the juvenile after the juvenile washes his or her hands. Do not allow the unattended juvenile to have access to water.

12–19. THE COLLECTION PERSONNEL SHOULD EXAMINE THE JUVENILE'S ARMS AND HANDS AFTER WASHING AND DRYING BEFORE PROCEEDING WITH A URINE SPECIMEN COLLECTION.

12–20. THE COLLECTION PERSONNEL WILL DIRECTLY AND CONTINUOUSLY OBSERVE URINE PASSING FROM THE JUVENILE INTO THE SPECIMEN CONTAINER.

Commentary: Direct observation by an agency official will allow him or her to testify confidently before a court or commission that rigorous chain of custody procedures were followed while the urine specimen was in his or her control. Officers observing the collection process should understand that they are responsible for the integrity of the urine specimen until it is released from their custody. As part of the chain of custody, the officer collecting the specimen may be required to testify in court that the specimen was not adulterated or tampered with in any way during the time it was in the officer's custody. Agency officers who discharge drug testing procedures must realize that urine specimens are evidence and the chain of custody of that evidence must be protected.

The juvenile should not be allowed to obscure the officer's view of the urine flow into the container. The case officer obtaining a specimen from a juvenile should witness the flow of urine from the body orifice into the collection container.

12–21. ANY SPECIMEN NOT GIVEN UNDER DIRECT AND CONTINUOUS OBSERVATION SHOULD BE CONSIDERED INVALID FOR TESTING.

Commentary: In some cases it may be necessary to use the results of a "deliberately invalid" specimen (a specimen which the officer did not directly observe but collects anyway). The results from such a specimen, particularly positive results, may still be used to confront the juvenile's illegal drug use. Conducting and analyzing "deliberately invalid" tests however, are strongly discouraged, since they will be inadmissable in court.

12–22. THE COLLECTION PERSONNEL AND THE JUVENILE SHOULD KEEP THE SPECIMEN CONTAINER AND SUPPORTING DOCUMENTS IN VIEW AT ALL TIMES.

Commentary: The juvenile providing the specimen and the collection site personnei should have the specimen in view at all times prior to labeling and sealing. While performing any part of the chain of custody procedures it is essential that the urine specimen and custody documents be under the control of the personnel observing the collection. Should this individual need to leave the work station momentarily, the specimen and custody form should be secured.

12–23. THE COLLECTION PERSONNEL SHOULD INSTRUCT THE JUVENILE TO SECURE THE CAP TIGHTLY AND WASH AND DRY THE CONTAINER AND HIS OR HER HANDS BEFORE LABELING AND SECURING THE SPECIMEN CONTAINER.

12–24. THE COLLECTION PERSONNEL SHOULD INSTRUCT THE JUVENILE TO AFFIX AN IDENTIFICATION LABEL TO THE SPECIMEN CONTAINER TOP (SEE APPENDIX B, ATTACHMENT 6).

Commentary: An identification label filled out by the officer will include any information the agency deems necessary. This information should be typed or printed with indelible ink. The juvenile should initial the specimen label on the bottle. The personnel conducting the collection should sign the log (See Appendix B, Attachment 14) next to the identifying information. Identifying information on the label should include:

- The name of the juvenile.
- The date and time.
- The name(s) of collection personnel.
- The name of the officer.
- The case or Social Security number of the juvenile.

12–25. THE COLLECTION PERSONNEL SHOULD INSTRUCT THE JUVENILE TO WRAP ONE PIECE OF EVIDENCE TAPE OVER EACH END OF THE CONTAINER.

Commentary: This step will seal the specimen container. The collection personnel may now assume possession of the specimen or allow the juvenile, while under observation, to place the specimen in a plastic bag.

12–26. THE JUVENILE SHOULD BE REQUESTED TO READ AND SIGN A STATEMENT CERTIFYING THAT THE IDENTIFIED SPECIMEN COLLECTED FROM THE JUVENILE IS IN FACT THAT SPECIMEN THE JUVENILE PROVIDED AND HAS NOT BEEN ADULTERATED IN ANY WAY (SEE APPENDIX B, ATTACHMENTS 3, 6, AND 8).

12–27. THE COLLECTION PERSONNEL AND JUVENILE SHOULD BE CONTINUOUSLY PRESENT WHILE GUIDELINES 12 THROUGH 26 ARE BEING EXECUTED.

Collection Followup

12–28. THE COLLECTION PERSONNEL WHO OBSERVED THE SPECIMEN COLLECTION SHOULD COMPLETE THE APPROPRIATE PORTION OF THE CHAIN OF CUSTODY FORM (SEE APPENDIX B, ATTACHMENT 3).

Commentary: The urine specimen and chain of custody form should be made ready for shipment. If the specimen is not shipped immediately, it should be safeguarded during temporary storage.

12–29. THE NUMBER OF PERSONS HANDLING THE SPECIMENS SHOULD BE KEPT TO A MINIMUM TO MAINTAIN THE INTEGRITY OF EVIDENCE FOR FUTURE DISCIPLINARY OR ADMINISTRATIVE PROCEEDINGS.

Commentary: The importance of this standard should always be emphasized. The least number of individuals participating in this function decreases the probability that a court challenge based on chain of custody will be successful.

12–30. COLLECTION PERSONNEL SHOULD MAINTAIN A CONTROL LOG (SEE APPENDIX B, ATTACHMENT 14).

Commentary: When the urine specimen is presented to the appropriate person(s), this individual(s) should enter the following information on a control log:

- The supervising officer's name.
- The collection person's name.
- The juvenile's name and case number.
- The time and date the specimen was collected.
- The time and date the specimen was transported to the test site.
- The date test results were received.
- The test results.

12–31. PERSONS HANDLING THE URINE SPECIMENS SHOULD MAKE THE NECESSARY LOG NOTATIONS IN ORDER TO PRESERVE THE INTEGRITY OF THE CHAIN OF CUSTODY.

12–32. THE COLLECTION PERSONNEL SHOULD REFRIGERATE URINE SPECIMENS IN A SECURED AREA AS SOON AS POSSIBLE UNLESS TESTING IS CONDUCTED IMMEDIATELY.

Commentary: Drug testing should be performed as soon as possible. Studies show there is minimal deterioration of the specimen at room temperature during a 2-hour period following collection. Refrigeration is warranted after this time period in order to diminish specimen deterioration. Specimens may be tested onsite immediately or tested onsite at a later date. If onsite testing is not available, specimens should be transferred to a designated agency test site or transported to a contracted laboratory.

12–33. STANDARDIZED CHAIN OF CUSTODY FORMS SHOULD BE SIGNED BY AUTHORIZED TEST SITE PERSONNEL UPON RECEIPT OF SPECIMENS (SEE APPENDIX B, ATTACHMENT 3).

Commentary: The handling and transportation of urine specimens from one authorized individual or place to another should always be accomplished through chain of custody procedures.

12–34. CHAIN OF CUSTODY DOCUMENTATION SHOULD ALWAYS BE ATTACHED TO EACH CONTAINER SEALED FOR SHIPMENT TO THE TEST SITE.

12–35. IN CASES WHERE A JUVENILE IS SUSPECTED OF HAVING A HIGHLY COMMUNICABLE DISEASE, ALWAYS PLACE THE SEALED SPECIMEN CONTAINER INSIDE A PLASTIC GLOVE OR OTHER DEVICE WHICH WILL ALERT THE ONSITE INSTRUMENT DRUG TESTING PERSONNEL THAT THE SPECIMEN WAS PROVIDED BY A PERSON SUSPECTED OF HAVING A HIGHLY COMMUNICABLE DISEASE.

Commentary: After handling specimen containers infected with a highly communicable disease, officers should always discard their protective gloves in a plastic bag marked with a highly communicable disease warning.

REPORTING RESULTS

The guidelines for reporting drug testing results should apply to both onsite instrument and noninstrument drug testing and contracted laboratories. Results need to be shared among probation and parole agencies, treatment agencies, courts, and parole boards. The sharing of results should be conducted within strict confidentiality protections. Agencies sharing drug testing results should have a joint strategy of how results will be used with the client. Agencies sharing results should have a strong knowledge of the process and technology used by other testing systems.

13–1. THE AGENCY SHOULD DEVELOP STRINGENT CONTROLS OVER HOW DRUG TESTING RESULTS ARE TO BE TRANSMITTED AND DESIGNATE WHICH AGENCY PERSONNEL ARE TO RECEIVE DRUG TEST RESULTS.

Commentary: The details of who will actually have access to test results is a matter that should be handled inhouse. Organizational size, workload, resources, and mission should be considered when making this determination.

13–2. DRUG TEST RESULTS SHOULD BE RETURNED BY THE LABORATORY TO THE DESIGNATED AGENCY PERSONNEL WITHIN 72 HOURS OF RECEIPT FROM THE AGENCY.

Commentary: The laboratory may provide results by mail, through a computer link, or by fax. Standard turnaround time should be 72 hours or less from the time the specimen reaches the laboratory until the results are received by agency personnel. In some circumstances, it may be appropriate for laboratories to provide test results verbally by telephone as long as formal results are received by the agency within 1 week.

The effectiveness of using results when managing juveniles is enhanced when results are received quickly. While a 72-hour turnaround is the preferred time length, it is recognized that several factors may influence laboratory personnel's ability to achieve this optimum. Laboratory downtime may be caused by such factors as testifying obligations of the laboratory staff, inadequate staffing of the laboratory, or leave time of staff. These factors should be taken into consideration when staffing or contracting for a laboratory to maintain a consistent turnaround time.

13–3. THE RESULTS SHOULD BE REPORTED ON THE CHAIN OF CUSTODY FORM THAT ACCOMPANIED THE SPECIMEN AND ON APPROPRIATE LOGS.

Commentary: In the event that the testing technology enables the result to be photocopied, a copy of the results should be made and filed in the juvenile's records.

13–4. THE RESULTS SHOULD IDENTIFY THE INSTRUMENTATION USED, THE DRUGS OR METABOLITES TESTED FOR, WHETHER THE TEST IS POSITIVE OR NEGATIVE, AND THE CUTOFF LEVELS FOR EACH TEST.

Commentary: Some testing systems provide semiquantitative results from their analysis procedures. These systems cannot provide definite quantitative data, but they do attempt to determine the proportion amounts of the drug or metabolite components in the urine and can provide the laboratory with a numeric value result for each drug screen run.

When available, semiquantitative information must be used cautiously. Personal characteristics of the juvenile (history of use, weight) will affect the ability to accurately interpret results. However, the ability to identify some evidence of use at lower levels can aid in managing the juvenile (preventing him or her from believing he or she has gotten away with it). Benefits of using this information carefully could include shortening of the denial stage and increasing the juvenile's perception of the credibility of the testing program.

If semiquantitative results are available, laboratory personnel should not report them on a regular basis. Laboratory personnel may share this information with the submitting personnel only when semiquantitative results indicate a number within a 20-point range below the cutoff level and only when the information should be used for inhouse management of the juvenile.

Testing personnel should never share semiquantitative results when the number is below the cutoff level.

13–5. THE LABORATORY SHOULD SEND ONE CERTIFIED COPY OF THE ORIGINAL CHAIN OF CUSTODY FORM, SIGNED BY THE INDIVIDUAL RESPONSIBLE FOR ATTESTING TO THE VALIDITY OF THE TEST REPORTS, TO THE REQUESTING OFFICER AND ONE COPY SHOULD BE FILED AT THE TEST SITE.

13–6. THE TEST RESULTS FROM THE LABORATORY SHOULD ALWAYS BE INCLUDED IN THE JUVENILE'S CASE FILE.

13–7. WRITTEN LABORATORY REPORTS OF POSITIVE DRUG TESTS SHOULD BE PRINTED ON LABORATORY OR AGENCY LETTERHEAD AND TO BE CONSIDERED "TRUSTWORTHY AND RELIABLE," SHOULD CONTAIN THE LABORATORY DIRECTOR'S SIGNATURE.

Commentary: Although laboratory reports are hearsay, they are properly admissible without confrontation and crossexamination and are an exception to the hearsay rule. Though this differs from one jurisdiction to another, such evidence is generally admissible without confrontation and crossexamination if good cause can be shown. In a laboratory testing situation where many persons could have been responsible for any one specimen, this is not difficult to show; however, the reports must be from an identified laboratory.

An agency should determine the form of laboratory reports and the necessary information they must contain to be admitted as evidence in hearings. Reports failing to be in proper form will make the written report inadmissible and make it necessary for laboratory personnel to testify. Use agency counsel to review report format issues.

USE OF RESULTS

The admissibility of scientific evidence is generally based on the Frye Doctrine which holds that "the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field to which it belongs." However, in some jurisdictions the Frye Doctrine has been eroded by court decisions or legislation mandating more liberal admissibility rules. A great majority of U.S. courts have ruled that drug test results are admissible as evidence regardless of whether the Frye Doctrine is used in that jurisdiction. While the evidence is admissible, the weight given to the test results is a matter of discretion by the judge or parole board. For example, most courts and parole boards would revoke parole on the basis of one positive test. Others require confirmation, meaning that they do not consider the results of a single test sufficiently reliable to warrant revocation or other sanctions.

14–1. WHEN RESPONDING TO POSITIVE RESULTS, THE AGENCY SHOULD ESTABLISH DESIGNATED PROCEDURES REQUIRING IMMEDIATE SANCTIONS FOR VIOLATIONS, IN COMPLIANCE WITH EXISTING AGENCY POLICIES.

Commentary: For any program to deter drug use, a released juvenile must be held accountable for any violations of the probation or parole conditions. Juvenile probation and parole agencies and the courts must demonstrate intolerance toward drug use during the supervision period. Random drug testing schedules should be established with escalating sanctions imposed if drug use continues. Drug counseling and drug education offer the juvenile an opportunity for treatment. This type of rehabilitation may prevent the juvenile from increasing levels of drug use and criminal behavior.

A negative result suggests that illegal drugs are not present in the juvenile's system. This result should be dealt with in a manner which encourages continued abstinence and helps build support with the juvenile.

Positive drug test results may be used in the following manner:

- To confront the juvenile.
- To hold the juvenile accountable.
- To make a treatment referral.

NOTE: Each agency should determine if its staff is qualified to counsel juveniles as part of the supervision process. If it is inappropriate for the agency staff to do so, then juveniles should be referred to outpatient counseling at a local drug and alcohol treatment facility or mental health center. If necessary, the juvenile should be placed in an inpatient treatment facility for the following treatments and results:

- To modify the conditions of supervision.
- To reinforce continued sobriety and abstinence.
- To impose progressive sanctions such as:
    - ☐ A verbal or written warning.
    - ☐ An inhouse disciplinary action, such as added community service hours, adjustment in curfew or travel restrictions, or administrative hearings.
    - ☐ An increased frequency of testing.
    - ☐ A modification of order to include required drug treatment, if this has not already been done.
    - ☐ A partial revocation to some type of alternative program or intermediate sanction short of incarceration, such as intensive probation, restitution center, house arrest, electronic monitoring, or short-term detention.
    - ☐ A full revocation.

Determining which sanction to use should depend on the number and frequency of positive results obtained, periods of abstinence, the court's tolerance level, and agency policies.

14–2. OFFICERS SHOULD REWARD JUVENILES WITH PRIVILEGES AFTER A PATTERN OF DRUG ABSTINENCE IS CLEARLY ESTABLISHED THROUGH NEGATIVE DRUG TESTS.

14–3. AGENCIES SHOULD REDUCE OR TERMINATE THE FREQUENCY OF DRUG TESTING FOR THOSE JUVENILES WHO ARE IN COMPLIANCE WITH THE CONDITIONS OF PROBATION OR PAROLE AFTER A SPECIFIED PERIOD OF TIME.

Commentary: There are numerous factors which should be considered when arriving at such a decision. A potential cost savings to the agency may be realized.

14–4. AGENCY POLICY SHOULD REQUIRE OFFICERS TO CONFRONT THE JUVENILE WITH POSITIVE DRUG TEST RESULTS AS SOON AS POSSIBLE.

Commentary: Juveniles who test positive should be confronted with test results within 72 hours after the agency has obtained the results. Under no circumstances should the period for confrontation exceed 7 days. The officer should discuss test results with the juvenile and give specific instructions regarding the behavior changes required to address the problem, including notification that the juvenile must stop using drugs. The officer should review the case management plan and the mandatory conditions of supervision with the juvenile. The officer and juvenile should also discuss the implications of future positive test results.

Before confronting the juvenile with unconfirmed results, careful review should be given to the juvenile's use of prescription or over-the-counter medication; the juvenile should have acknowledged this usage in writing prior to the drug test. Since initial screening tests identify classes of drugs (such as opiates), not the specific drugs within the class (such as codeine, morphine, or hydromorphine), an officer needs to be certain the positive result did not occur from a legitimate use of medication. If there is ever any question, officers should consult with agency testing authorities.

14–5. DRUG TESTING RESULTS USED TO SUBSTANTIATE A VIOLATION OF PROBATION OR PAROLE SHOULD BE HANDLED IN A MANNER THAT ENSURES THEIR CREDIBILITY IN A LEGAL PROCEEDING.

Commentary: Every detail of the chain of custody should be documented so that the integrity of the specimen is never in doubt.

14–6. AGENCY OFFICERS SHOULD OBTAIN AND DOCUMENT OTHER APPROPRIATE CASE DATA AND NOT RELY SOLELY ON DRUG TEST RESULTS AS A BASIS FOR A REVOCATION ACTION.

Commentary: Consideration should be given to a juvenile's overall level of compliance with the conditions of probation or parole. A juvenile who has demonstrated stability in other respects while under supervision may, at the discretion of the agency officer, receive a written warning on one positive drug test.

CONFIDENTIALITY

As a general principle, confidentiality of test results must be protected by the agency to the fullest extent possible. This is necessary because drug testing may disclose not only drug use but also the taking of other medication to control psychological or physiological disorders unrelated to the offense for which the juvenile is on probation or parole. Also, possible civil liabilities exist in improper disclosure. Although juvenile offenders have a diminished constitutional right to privacy, they are nonetheless entitled to a measure of protection, particularly in such sensitive matters as the use of drugs.

Confusion abounds on the issues of disclosure or nondisclosure of test results. This is because confidentiality is governed by various rules that are not easy to gather and understand. For instance:

- There are Federal rules that govern the release or nonrelease of information of drug tests that use Federal funds. These rules are extremely complex and are often changed.
- Some States have laws that govern the disclosure or nondisclosure of information, but these laws may not be specific to probation and parole or even to drug testing. These laws tend to be complex and are usually unclear about what specifically can be withheld or disclosed. Inevitably, these laws vary from State to State and are therefore difficult to generalize.
- Although there have not yet been any cases addressing the issue of to whom the information may or may not be disclosed, this may change at any time–particularly as drug testing becomes more prevalent and further legal challenges develop.

Despite this muddled picture, there are certain guidelines on confidentiality that can be helpful when drafting drug testing policies and procedures. These standards are derived from case law, State legislation, and Federal guidelines.

15–1. THE CONFIDENTIALITY OF DRUG TESTING RESULTS AND THE INDIVIDUAL RIGHT TO PRIVACY SHOULD BE UNCOMPROMISINGLY CONTROLLED.

Legal Requirements

15–2. AGENCIES SHOULD CONFORM TO EXISTING STATE LAWS AND COURT DECISIONS ON THE RELEASE OR NONRELEASE OF INFORMATION RESULTING FROM DRUG TESTS AND SHOULD REVIEW THESE LAWS AND COURT DECISIONS PERIODICALLY.

Commentary: If there are State laws or court decisions, these must be incorporated into agency guidelines and followed strictly. This is the most important standard on confidentiality. It is important that this be ascertained by the agency prior to drafting agency rules on drug tests. If such information is not readily available, information must be sought from a knowledgeable lawyer or the office of the State attorney general. If such rules exist, agencies must strictly adhere to these rules. Even if State law or court decisions exist but do not cover the whole area of confidentiality, the agency must draft its own rules to supplement unaddressed concerns. In the absence of State confidentiality laws, Federal laws should be followed.

15–3. IF THERE ARE NO STATE LAWS OR COURT DECISIONS GOVERNING THE RELEASE OR NONRELEASE OF DRUG TEST RESULT INFORMATION, THE AGENCY SHOULD DRAFT ITS POLICY IN COMPLIANCE WITH FEDERAL CONFIDENTIALITY LAWS.

Commentary: If there is State law on disclosure of information, such law is best incorporated in the agency policy on disclosure. If there is no such law, it becomes even more important that there be an agency policy on confidentiality. Civil liability risks for the officers and the agency are minimized if a carefully drawn policy is used by the agency.

Perhaps the safest disclosure policy is one that limits disclosure:

- To the juvenile and parents or guardians of the juvenile.
- To a third party with the juvenile's, parent's, or guardian's prior written consent.
- Pursuant to a court order.

Provided State law or court decisions in that jurisdiction do not provide otherwise, the following agencies or personnel may also be given access to test result information:

- Medical personnel who require the information to meet that individual's bona fide medical needs.
- Qualified personnel for research, audit, or program evaluation.
- Other criminal justice or juvenile justice agencies on a "need to know" basis.

It is recommended that the agency produce a list of what types of information may be released and to whom. The list should also state what kind of information cannot be released and the possible penalties for unauthorized disclosure.

Protocol for Releasing Results

15–4. REQUESTS FOR DISCLOSURE OF TEST RESULT INFORMATION TO THOSE OTHER THAN WHOM THE INFORMATION SHOULD BE DISCLOSED BY STATUTE OR CASE LAW SHOULD BE MADE IN WRITING.

Commentary: This protects the officers and agency from the risks associated with malicious or bogus requests. Requests for disclosure by telephone cannot be honored unless authorized by State legislation or case law.

15–5. THERE SHOULD BE PROPER DOCUMENTATION OF THE ACTION TAKEN AND TO WHOM AND WHEN THE DISCLOSURE WAS MADE.

Commentary: The agency must carefully monitor the release of information on drug test results. This policy protects the agency and its officers against allegations of careless release.

15–6. IF THE AGENCY IS USING FEDERAL FUNDS FOR TESTING, THE AGENCY SHOULD COMPLY WITH FEDERAL RULES ON CONFIDENTIALITY.

Commentary: Such rules are found in 42 C.F.R., Part 2, Revised as of October 1, 1988.

15–7. AGENCY DRUG TESTING POLICY SHOULD CLEARLY DELINEATE THE PROCEDURES TO BE FOLLOWED FOR DISCLOSING JUVENILE DRUG TEST RESULTS.

Commentary: Disclosure policy should clearly state:

- The individuals who are eligible to receive the results.
- The type of information which can and cannot be released.
- Any conditions associated with releasing test results.
- The State law and agency policy governing disclosure of information.
- Any disciplinary action that will be undertaken when a breach of law or policy occurs.

15–8. TEST RESULTS SHOULD BE DISCLOSED ONLY TO THOSE WHO ARE REQUIRED BY LAW OR AGENCY POLICY TO HAVE THEM.

15–9. WHENEVER THERE IS A QUESTION CONCERNING THE DISCLOSURE OF TEST RESULTS, THEY SHOULD BE RELEASED ONLY WITH THE AUTHORIZATION OF A JUVENILE COURT JUDGE OR PAROLE BOARD.

15–10. IF THE JUVENILE COURT OR PAROLE BOARD CANNOT OR WILL NOT AUTHORIZE THE DISCLOSURE OF DRUG TEST RESULTS, THE RESULTS SHOULD NOT BE RELEASED.

JUVENILE JUSTICE DRUG TESTING OPTIONS

A probation or parole agency responsible for juvenile justice drug testing has several alternatives for deciding where the actual drug testing will take place. These options include the following:

1. Contracting for drug testing services

   Drug testing services can be contracted to any reference laboratory with forensic testing capability. Forensic testing refers to handling specimens which have potential legal implications, such as employee testing or juvenile justice testing.

   A reference laboratory may have clinical diagnostic capability which involves a wide range of diagnostic testing on bodily fluids primarily for medical purposes. *It is not necessary when contracting with a reference laboratory for juvenile justice testing services that a laboratory have clinical diagnostic capability.*

   Subspecialty laboratories used exclusively for criminal justice drug testing do exist. These laboratories are facilities for drug use screening and confirmation and for drug detection testing; they are not subject to all regulations as defined for clinical laboratories.

2. Onsite drug testing

   Probation and parole agencies have the option of testing onsite for their initial screening testing needs. There are currently two types of onsite testing capabilities.

   (1) Onsite instrument-based drug testing uses a more formal laboratory-like instrument to detect drug use.

   (2) Onsite noninstrument-based drug testing relies on a small slide or card for the almost immediate detection of drug use.

Because both of these options involve only initial screening, they are not subject to all the same regulations as defined for clinical laboratories. This is why the APPA guidelines were needed to establish credible onsite testing programs.

Probation and parole agencies may use a combination of contracted services and onsite testing to provide for their testing needs, especially since only GC/MS confirmation tests are currently conducted at reference laboratories.

CONTRACTING FOR DRUG TESTING SERVICES

The purpose of this section is to assist agencies in developing the criteria required for initiating a contractual arrangement for laboratory drug testing services. Although this testing will take place offsite, agency authorities need to be actively involved in understanding and monitoring the operations of a contracted laboratory. This will help increase the cost-effectiveness of the contracting option.

Laboratories that meet the APPA drug testing guidelines are acceptable for contracts to conduct drug testing. In contracting with a laboratory for drug testing services, the agency should consider the following criteria:

- The methodologies used at the laboratory site should comply with APPA guidelines.
- The sequencing and occurrence of initial and confirmatory testing required by the agency.
- The possibility of developing a trends analysis system based on the test results of the agency's offender population.
- The adequacy of the laboratory facilities.
- The expertise and experience of the laboratory personnel.
- The ratings of the laboratory on any performance tests.
- The excellence of the laboratory's quality assurance or quality control program.
- The laboratory's compliance with guidelines as reflected in any laboratory inspections.
- Other factors affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

Laboratory Personnel

16–1. THE LABORATORY SHOULD HAVE A QUALIFIED INDIVIDUAL TO ASSUME PROFESSIONAL, ORGANIZATIONAL, EDUCATIONAL, AND ADMINISTRATIVE RESPONSIBILITY FOR THE LABORATORY'S URINE DRUG TESTING OPERATIONS.

NOTE: This individual will hereafter be referred to as the director.

16–2. THE DIRECTOR SHOULD HAVE DOCUMENTED SCIENTIFIC QUALIFICATIONS IN ANALYTICAL FORENSIC TOXICOLOGY FOR ANY LABORATORY WITH GC/MS CAPABILITY.

Commentary: The minimum management qualifications should be the following:

A. Certification as a laboratory director by the State in forensic or clinical laboratory toxicology.

or

B. A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology.

or

C. Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory or research experience in biology, chemistry, and pharmacology or toxicology.

and

D. In addition to the requirements in A, B, and C above, minimum qualifications also require:

(1) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse.

and

(2) Appropriate training or experience in forensic applications of analytical toxicology (for example,

publications, court testimony, research concerning analytical toxicology of drugs of abuse) or other factors that qualify the individual as an expert witness in forensic toxicology.

16–3. THE DIRECTOR FOR JUVENILE JUSTICE LABORATORIES WHO PERFORMS INITIAL SCREENING SERVICES SHOULD HAVE THE SAME QUALIFICATIONS BASE AS THE MANAGER FOR A JUVENILE JUSTICE ONSITE INSTRUMENT-BASED TESTING FACILITY.

16–4. THE DIRECTOR SHOULD MANAGE THE DAILY WORKINGS OF THE DRUG TESTING LABORATORY EVEN WHEN ANOTHER INDIVIDUAL IS RESPONSIBLE FOR AN ENTIRE MULTISPECIALTY LABORATORY.

16–5. THE DIRECTOR SHOULD ENSURE THAT PERSONNEL HAVE ADEQUATE TRAINING AND EXPERIENCE TO SUPERVISE AND CONDUCT THE WORK OF THE DRUG TESTING LABORATORY.

Commentary: The director should assure the continued competency of laboratory personnel by documenting inservice training, reviewing work performance, and verifying skills.

Laboratory Analysis Procedures

16–6. THE DIRECTOR SHOULD MAINTAIN A COMPLETE, UP-TO-DATE LABORATORY PROCEDURES MANUAL, MAKE IT AVAILABLE TO ALL PERSONNEL PERFORMING TESTS, AND MAKE SURE IT IS RIGOROUSLY FOLLOWED BY THOSE PERSONNEL.

Commentary: The procedures manual should be reviewed, signed, and dated by the director whenever procedures are first implemented or changed, or when there is another individual managing the drug testing laboratory. Copies of new procedures and dates, as they become effective, should be maintained. The manual should include information on the following:

- The controls.
- The references.
- The cutoff values.
- The sequence of methods.
- The derivation of results.
- The calibration procedures.
- The standards and controls.
- The preparation of reagents.
- The principles of each test.
- The sensitivity of the methods.
- The reagents and expiration dates.
- The mechanisms for reporting results.
- The criteria for unacceptable specimens and results.
- The remedial actions to be taken when the test systems are outside of acceptable limits.

Quality Assurance and Quality Control

16–7. AGENCY AUTHORITIES SHOULD REVIEW THE LABORATORIES' QUALITY ASSURANCE AND QUALITY CONTROL RECORDS AT LEAST QUARTERLY.

Commentary: It is critical that all laboratories involved with juvenile justice testing be reviewed on a regular basis to assure compliance with quality assurance and control practices.

16–8. THE DIRECTOR SHOULD BE RESPONSIBLE FOR MAINTAINING A QUALITY ASSURANCE PROGRAM THAT ENCOMPASSES ALL ASPECTS OF THE TESTING PROCESS.

Commentary: Quality assurance procedures should be designed, implemented, and reviewed to monitor the conduct of each step of the drug testing process. The procedures should include the following:

- The chain of custody.
- The specimen acquisition.
- The initial and confirmatory testing.
- The security and reporting of results.
- The validation of analytical procedures.

This program should assure the following:

- The maintenance of quality control testing.
- The proper performance and reporting of test results.
- The maintenance of acceptable analytical performance for controls and standards.
- The documentation of the following characteristics of each test and test system including:
  - ☐ Accuracy.
  - ☐ Validity.
  - ☐ Precision.
  - ☐ Performance.
  - ☐ Reliability.

16–9. THE DIRECTOR SHOULD BE RESPONSIBLE FOR TAKING NECESSARY REMEDIAL ACTION TO MAINTAIN THE SATISFACTORY OPERATION AND PERFORMANCE OF THE LABORATORY.

Commentary: The director should respond when quality control systems are not within performance specifications and when errors are made in result reporting or in the analysis of performance testing results. The director should also ensure that specimen results are reported after corrective action has been taken and be able to guarantee that the test results provided are accurate and reliable.

16–10. THE LABORATORY'S DRUG TESTING FACILITY SHOULD HAVE AT LEAST ONE QUALIFIED INDIVIDUAL WHO REVIEWS PERTINENT DATA AND QUALITY CONTROL RESULTS THAT DEMONSTRATE THE VALIDITY OF THE LABORATORY'S TEST REPORTS.

Commentary: A laboratory may designate more than one person to perform this function. This individual may be any employee who is qualified for day-to-day management or operation of the drug testing laboratory.

16–11. THE LABORATORY'S DRUG TESTING FACILITY SHOULD HAVE AN INDIVIDUAL MANAGING DAY-TO-DAY OPERATIONS AND SUPERVISING TECHNICIANS.

Commentary: This individual should have at least a bachelor's degree in the chemical or biological sciences, medical technology, or the equivalent. The individual should have training and experience in the theory and practice of laboratory procedures; a thorough understanding of quality control practices and procedures; the ability to review, interpret, and report test results; experience with the maintenance of the chain of custody; and a knowledge of proper remedial actions when control limits are exceeded or aberrant test or quality control results are detected.

16–12. THE LABORATORY'S DRUG TESTING PROGRAM SHOULD HAVE CONTINUING EDUCATION PROGRAMS AVAILABLE TO MEET THE NEEDS OF LABORATORY PERSONNEL.

16–13. LABORATORY PERSONNEL FILES SHOULD INCLUDE:

- A list of references.
- Any incident reports.
- A copy of the job description.
- A copy of certification or license.
- A resume of training and experience.
- A copy of performance evaluations and advancements.
- A copy of test results that establish employee competency for the position held.

Laboratory Security

16–14. DRUG TESTING LABORATORIES SHOULD BE SECURE AT ALL TIMES.

Commentary: Laboratories should have sufficient security measures in place to control access to the premises and to ensure that only authorized personnel handle specimens and have access to the laboratory's processes and records. Access to these secure areas should be limited to specific individuals with documented authorization. All visitors, maintenance workers, and service personnel—with the exceptions of personnel authorized to conduct inspections on behalf of State and local agencies or on behalf of the agency director—should be escorted at all times. Documentation of individuals accessing these secure areas should be maintained and include dates, times, and purposes of entry.

Contracted laboratories should not allow any employee who may be on probation or parole access to the specimens or procedures.

16–15. LABORATORIES SHOULD USE CHAIN OF CUSTODY PROCEDURES TO MAINTAIN CONTROL AND ACCOUNTABILITY OF SPECIMENS: FROM RECEIPT THROUGH TESTING; THE REPORTING OF RESULTS, AND STORAGE; AND CONTINUING UNTIL FINAL DISPOSAL OF SPECIMENS.

Commentary: Each time a specimen is handled or transferred, the date and the purpose of transferral should be documented on an appropriate chain of custody form. Every individual in the chain should be identified. Authorized technicians should be responsible for each urine specimen and aliquot in their possession and should sign and complete chain of custody forms for those specimens and aliquot as they are received.

16–16. IN THE CONTRACT, THE JUVENILE PROBATION OR PAROLE AGENCY SHOULD ENSURE THAT THE LABORATORY ADHERES TO PROPER CHAIN OF CUSTODY PROCEDURES AND COMPLIES WITH STATE AND FEDERAL LEGISLATION AND CASE LAW, IF ANY.

Commentary: Should the testing of specimens be contracted with an outside laboratory instead of conducted onsite, the chain of custody problem becomes of joint concern to both the agency and the laboratory. To insure proper procedures, the agency must incorporate the proper chain of custody procedures it wants the laboratory to observe. When necessary, witnesses must be made available by the laboratory without expense to the agency to prove that the proper chain of custody procedures were followed.

Tampering

16–17. WHEN A SHIPMENT OF SPECIMENS IS RECEIVED, LABORATORY PERSONNEL SHOULD INSPECT EACH PACKAGE FOR EVIDENCE OF POSSIBLE TAMPERING AND COMPARE INFORMATION ON SPECIMEN BOTTLES IN EACH PACKAGE WITH THE INFORMATION ON THE ACCOMPANYING CHAIN OF CUSTODY FORMS.

16–18. IN THE EVENT THAT EVIDENCE OF TAMPERING IS DISCOVERED, THE LABORATORY SHOULD NOTIFY THE AGENCY AND PROCEED ACCORDING TO AGENCY DIRECTIONS.

16–19. CONTRACTED LABORATORIES SHOULD TEST ONLY THOSE DRUG CATEGORIES REQUESTED BY THE AGENCY AS INDICATED ON THE REQUEST FOR DRUG TEST FORM. (SEE APPENDIX B, ATTACHMENT 3.)

16–20. THE AGENCY AND CONTRACTED LABORATORY SHOULD DETERMINE EXACTLY WHICH DRUG CATEGORIES WILL BE INCLUDED ON A FULL DRUG SCREEN PRIOR TO SIGNING THE CONTRACT.

Initial and Confirmatory Capability at Same Site

16–21. A FORENSIC REFERENCE LABORATORY SHOULD HAVE THE CAPABILITY TO CONDUCT BOTH INITIAL AND CONFIRMATORY TESTS ON THE SAME LABORATORY PREMISES. A JUVENILE JUSTICE DRUG TESTING LABORATORY MAY BE USED ONLY TO PROVIDE INITIAL SCREENING.

Commentary: This capability should include testing for any drug authorized by the agency. Additionally, some drug testing laboratories have reciprocity agreements with NIDA-qualified laboratories when a GC/MS confirmation is required. An agreement of this nature would reduce the overall cost per test for agency referrals.

16–22. THE INITIAL TEST EMPLOYED BY THE CONTRACTED LABORATORY SHOULD USE AN IMMUNOASSAY THAT MEETS THE REQUIREMENTS OF THE FOOD AND DRUG ADMINISTRATION FOR COMMERCIAL DISTRIBUTION.

16–23. URINE SPECIMENS IDENTIFIED AS POSITIVE AND REQUIRING CONFIRMATION SHOULD BE CONFIRMED USING GAS CHROMATOGRAPHY/MASS SPECTROMETRY (GC/MS), EXCEPT FOR IN APPROVED CIRCUMSTANCES AS PER APPA CONFIRMATORY GUIDELINES.

Commentary: This guideline does not rule out the use of other sophisticated confirmation methods appropriate under certain circumstances. There could be cases where the confirmation of a specific drug may be more thoroughly analyzed using a methodology other than GC/MS. Furthermore, some jurisdictions may permit other sophisticated confirmation methods. However, GC/MS is the "gold standard" and should be used whenever the offender denies drug use, and the test result is used as evidence in a revocation proceeding. The criteria which require confirmations and other confirmatory options are delineated in guidelines 6–1 through 6–13.

Evaluation of Performance Testing

16–24. THE LABORATORY SHOULD PROVIDE THE AGENCY DRUG TESTING PROGRAM COORDINATOR WITH A MONTHLY STATISTICAL SUMMARY OF TEST RESULTS.

Commentary: Initial and confirmation data should be included from test results reported during that month. The summary should contain:

- The number of specimens received.
- The number of positives confirmed.
- The number of specimens screened positive and for which drugs.

16–25. THE AGENCY DIRECTOR AND OTHER STATE OFFICIALS SHOULD HAVE THE RIGHT TO INSPECT THE LABORATORY AT ANY TIME.

Commentary: An agency contract with a laboratory for drug testing or any contract for collection site services should permit the agency to conduct unannounced inspections.

16–26. THE LABORATORY SHOULD BE REQUIRED TO MAINTAIN DOCUMENTS FOR ANY SPECIMEN UNDER LEGAL CHALLENGE FOR AN INDEFINITE PERIOD.

16–27. A LABORATORY SHOULD HAVE DESIGNATED PERSONNEL TO TESTIFY IN LEGAL PROCEEDINGS REGARDING THE RELIABILITY OF TEST RESULTS WHEN NECESSARY.

Commentary: The fifth amendment right to confrontation and cross-examination protects persons from the hazards of hearsay evidence. Defendants should be convicted only when they have had a chance to confront and question their accusers. Probation or parole revocation, however, is not a trial. Consequently, probationers are not entitled to the full panoply of constitutional rights guaranteed to presumably innocent defendants. Standing alone, test results deprive juveniles of the right to confrontation and cross-examination. It is hearsay if the technician who conducts the test cannot be in court for cross-examination. However, exceptions to the hearsay rule exist, including the introduction of drug testing laboratory reports in certain instances. Agencies should be prepared to bring the appropriate personnel into court whenever expert testimony is required for any part of the testing process.

16–28. LABORATORY FACILITIES SHOULD COMPLY WITH APPLICABLE PROVISIONS OF ANY STATE LICENSURE REQUIREMENTS.

16–29. LABORATORY CONTRACTS SHOULD REQUIRE THAT THE CONTRACTOR COMPLY WITH THE PRIVACY ACT, 5 U.S.C. 552a.

Commentary: Contracts should require compliance with the patient access and confidentiality provisions of section 503 of Public Law 100-71.

16–30. THE AGENCY SHOULD RETAIN THE RIGHT TO TERMINATE THE CONTRACTUAL ARRANGEMENT WITH ANY LABORATORY TO ENSURE THE FULL RELIABILITY AND ACCURACY OF DRUG TESTS AND THE ACCURATE REPORTING OF TEST RESULTS.

Commentary: The agency should consider the following factors when making a determination to terminate a contract:

- False positives for confirmatory tests.
- Unsatisfactory participation in performance evaluations or laboratory inspections.
- Unsatisfactory performance in analyzing and reporting the results of drug tests, especially a false positive.
- Conviction for any criminal offense committed as an incident to operation of the laboratory.

- Material violation of a contract term or other condition imposed on the laboratory by the agency using the laboratory services.
- Any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.
- Laboratory expertise in meeting test performance standards of a State agency (for example, State health department) authorized to review and license laboratories within its jurisdiction.

16–31. THE AGENCY SHOULD AUDIT THE PERFORMANCE TEST REQUIREMENTS.

Commentary: Performance testing is a necessary part of the continuing assessment of the laboratory's performance. Agencies may wish to establish their own criteria for the evaluation of performance testing, but should consider the following:

- False positives for confirmatory tests should disqualify a laboratory from consideration.
- An initial three cycles of successful participation in testing should be required before a laboratory may be considered.
- Laboratories must correctly identify and confirm 90 percent of the total drug challenges in the three initial cycles.
- Laboratories should be challenged every other month with sets of at least 10 specimens for a total of 6 cycles per year.
- Performance test specimens should be handled in a manner identical to that applied to routine laboratory specimens.
- Laboratories should be subject to blind performance testing with performance expectations at the same level as for open performance testing.
- Laboratories should report performance testing results in the same manner as those for routine laboratory specimens.
- Performance test specimens should approximate levels of drug and metabolite concentrations that might be expected in the urine of recent drug users.
- Laboratory experience in meeting test performance standards of a State agency (for example, the State health department) authorized to review and license laboratories within its jurisdiction.

16–32. AGENCIES SHOULD DEVELOP RESPONSES FOR DEALING WITH FALSE POSITIVES.

Commentary: An agency detecting a false positive should immediately notify the laboratory and the agency director. The laboratory should provide the agency director with a written explanation within 5 working days.

16–33. THE LABORATORY'S PRACTICES SHOULD COMPLY WITH OTHER APPLICABLE APPA DRUG TESTING GUIDELINES.

Commentary: These practices include legal issues, confidentiality, specimen storage, reporting of results, and confirmations.

ESTABLISHING JUVENILE JUSTICE ONSITE INSTRUMENT-BASED DRUG TESTING FOR INITIAL DRUG TESTING

In recent years, drug testing technology has evolved to a more straightforward level of instrumentation. The ease of operation of these instruments has established a viable, cost-effective alternative to contracting for drug testing services. As more juvenile probation or parole agencies become involved in operating their own testing equipment, the need has emerged for onsite instrument guidelines to ensure and enhance the credibility, accuracy, and defensibility of probation or parole onsite instrument-based drug testing.

The following represent appropriate guidelines for juvenile probation or parole onsite instrument-based drug testing. It is important to know that compliance with these guidelines at the highest level does not guarantee accuracy of each result reported by the test site. Results from an onsite testing facility must be interpreted with a complete understanding of the total collection, analysis, and reporting processes before a final conclusion is made.

Onsite instrument-based drug testing facilities require accountability for efficient quality assurance and quality control procedures associated with the operations of a more formal laboratory. These are outlined in the following guidelines and provide the necessary framework for operating procedures which enhance the credibility of this initial screening alternative for juvenile justice drug testing services. The following APPA guidelines would also apply to an offsite instrument-based juvenile justice drug testing facility which an agency could contract to perform their initial screening tests.

These guidelines apply only to initial testing and not to the GC/MS confirmatory operations which may be required for some positive screens. GC/MS is operated only in more formal reference laboratories, and an agency will need to contract for these services. The APPA contracting guidelines for drug testing services apply to those facilities with GC/MS capability.

Initial Test (Screening Test)

17–1. THE INITIAL TEST SHOULD USE AN IMMUNOASSAY WHICH MEETS FDA REQUIREMENTS FOR COMMERCIAL DISTRIBUTION.

Commentary: The purpose of this initial test is to eliminate negative specimens from further consideration and to identify positive specimens. Juvenile probation or parole onsite drug testing using an immunoassay methodology is technically only an initial test instrument. However, these laboratories can provide confirmatory alternatives to the more formal and expensive GC/MS confirmation, as described in the confirmation section of these guidelines.

Drugs To Include in Testing Protocol

17–2. ONSITE INSTRUMENT-BASED DRUG TESTING SHOULD HAVE THE CAPABILITY OF TESTING FOR AT LEAST FIVE ILLEGAL DRUGS OR DRUG CATEGORIES, WHICH MAY INCLUDE MARIJUANA, COCAINE, AMPHETAMINES, BARBITURATES, OPIATES, PCP, BENZODIAZAPENES, OR OTHER DRUGS OF ABUSE CURRENTLY IN THE AREA.

Commentary: Illegal drugs refer to those drugs included in Schedule I or II of the Controlled Substance Act, but not when used pursuant to a valid prescription or when used as otherwise authorized by law.

Number of Tests per Specimen

17–3. ONSITE INSTRUMENT-BASED TESTING SHOULD TEST ONLY FOR THOSE DRUG CATEGORIES REQUESTED BY THE SUPERVISING OFFICER AS INDICATED ON THE REQUEST FOR DRUG TEST(S) FORM, UNLESS OTHERWISE AUTHORIZED BY APPROPRIATE PERSONNEL (SEE APPENDIX B, ATTACHMENT 3).

17–4. AGENCY AUTHORITIES SHOULD PREDETERMINE WHICH DRUG CATEGORIES SHOULD BE INCLUDED ON A FULL SCREEN AND THE FREQUENCY OF USE OF FULL SCREENS.

Commentary: Instrument tests will be run for routine partial screens on most specimens. Partial screens should consist of testing for one to three illegal drugs, depending on the drugs that are most abused by the juvenile population and the funds of the agency. Various drug types will be tested depending on geographic locations.

Full screens will be run as requested by the supervising officer. It is critical that a testing site conducts random full screens to identify the current drugs of choice and detect changes in drug use trends at least quarterly. The ability to run full screens more frequently will often depend on the financial resources of the agency. The inability to run routine full screens does not necessarily decrease the effectiveness of onsite instrument-based testing. Significant resources can be saved by conducting primarily partial screens.

Security

17–5. ONSITE INSTRUMENT-BASED TESTING SHOULD HAVE SUFFICIENT SECURITY MEASURES IN PLACE TO CONTROL ACCESS TO THE PREMISES AND TO ENSURE THAT NO UNAUTHORIZED PERSONNEL HANDLE SPECIMENS OR GAIN ACCESS TO THE TEST SITE PREMISES OR TO THE AREA WHERE RECORDS ARE STORED.

Commentary: Security of the laboratory testing site should be taken into consideration before selecting the laboratory site. In many cases, the laboratory site will be a room in a juvenile probation or parole facility. This room should be locked when not in use, and unauthorized personnel—including cleaning and maintenance crews—should be accompanied by staff into the laboratory. Only authorized laboratory personnel should have keys to the laboratory.

Location of Onsite Testing

17–6. ONSITE INSTRUMENT-BASED TESTING SHOULD BE ESTABLISHED IN ROOMS WITH ADEQUATE VENTILATION, LIGHTING, ELECTRICAL OUTLETS, AND ACCESS TO HOT AND COLD RUNNING WATER.

17–7. ONSITE INSTRUMENT-BASED TESTING SHOULD BE LOCATED AWAY FROM THE NORMAL FLOW OF PERSONNEL TRAFFIC.

17–8. ONSITE INSTRUMENT-BASED TESTING ROOM(S) SHOULD BE LARGE ENOUGH TO CONTAIN TESTING EQUIPMENT AND SUPPLIES, REFRIGERATORS AND FREEZERS, TESTING RECORDS, AND THE TESTING SITE PERSONNEL'S SUPPLIES.

17–9. THE GENERAL SECURITY OF THE AREA IN WHICH THIS FACILITY IS LOCATED SHOULD BE CONSIDERED BEFORE IT IS SELECTED FOR ONSITE TESTING.

Chain of Custody

17–10. ONSITE INSTRUMENT-BASED TESTING SHOULD USE CHAIN OF CUSTODY PROCEDURES TO MAINTAIN CONTROL AND ACCOUNTABILITY OF SPECIMENS FROM RECEIPT THROUGH COMPLETION OF TESTING, DURING REPORTING OF RESULTS, DURING STORAGE, AND CONTINUING UNTIL FINAL DISPOSITION OF SPECIMENS.

17–11. THE DATE AND PURPOSE OF TESTING SHOULD BE DOCUMENTED ON AN APPROPRIATE CHAIN OF CUSTODY FORM WHEN THE SPECIMEN IS RECEIVED AND EACH TIME A SPECIMEN IS TRANSFERRED. EVERY INDIVIDUAL HANDLING THE SPECIMEN SHOULD BE IDENTIFIED.

17–12. WHEN A SHIPMENT OF SPECIMENS IS RECEIVED, ONSITE INSTRUMENT-BASED TESTING PERSONNEL SHOULD ACKNOWLEDGE RECEIPT ON THE CHAIN OF CUSTODY FORM AND PROVIDE A COPY TO THE DELIVERER.

17–13. ONSITE INSTRUMENT BASED TESTING PERSONNEL SHOULD MAINTAIN A CONTROL LOG.

Commentary: When the urine specimen is presented to the onsite instrument testing personnel, testing site staff should enter and update the following information on a control log:

- The test results.
- The date results are reported.
- The supervising officer's name.
- The name of the staff member receiving the specimen.
- The juvenile's last name and identifying number.
- The time and date the specimen was received.
- The time and date the specimen was shipped to another confirmatory site, if applicable.

17–14. ONSITE INSTRUMENT-BASED TESTING PERSONNEL SHOULD INSPECT EACH PACKAGE FOR EVIDENCE OF POSSIBLE TAMPERING AND COMPARE INFORMATION ON SPECIMEN BOTTLES WITHIN EACH PACKAGE TO THE INFORMATION ON THE ACCOMPANYING CHAIN OF CUSTODY FORM.

17–15. ANY DIRECT EVIDENCE OF TAMPERING OR DISCREPANCIES IN THE INFORMATION ON SPECIMEN BOTTLES AND THE AGENCY'S CHAIN OF CUSTODY FORM ATTACHED TO THE SHIPMENT SHOULD BE REPORTED IMMEDIATELY TO THE SUBMITTING OFFICE, AND SHOULD BE NOTED ON THE CHAIN OF CUSTODY FORM WHICH SHOULD ACCOMPANY THE SPECIMENS WHILE THEY ARE ONSITE.

Commentary: It is critical to the credibility of onsite instrument testing that the same rigorous chain of custody procedures followed prior to the specimen's arrival at the test site are also maintained while the specimen is onsite. Any weakness in this chain could result in the inadmissibility of test results in a court hearing, and could jeopardize the reputation of onsite instrument testing.

Storage

17–16. SHORT TERM STORAGE: SPECIMENS WAITING TO BE TESTED SHOULD BE STORED IN A REFRIGERATOR ACCORDING TO THE TESTING SUPPLIER'S REQUIREMENTS.

Commentary: Every supplier will recommend that urine specimens be refrigerated after being at room temperature for a certain length of time in order for their assays to detect drugs or metabolites accurately. Test results are only as good as the specimen from which they come. Deviations from manufacturers' recommendations could result in inaccurate test results.

Nonrefrigerated specimens will require storage for 2 to 48 hours. It is important to include the amount of time the specimen was not refrigerated during collection and transportation to determine the need for storage at the laboratory. Refrigeration temperatures generally should not exceed 6 degrees Celsius.

17–17. LONG-TERM STORAGE: IN THE EVENT OF A POSITIVE RESULT ON AN INITIAL TEST, TEST SITES SHOULD FREEZE THE SPECIMEN TO ENSURE THAT POSITIVE URINE SPECIMENS WILL BE AVAILABLE FOR ANY NECESSARY RETESTING.

17–18. UNLESS OTHERWISE AUTHORIZED IN WRITING BY THE SUPERVISING OFFICER, DRUG TESTING LABORATORIES SHOULD RETAIN, FREEZE, AND PLACE THE POSITIVE SPECIMEN IN PROPERLY SECURED LONG-TERM STORAGE FOR A PERIOD OF 90 DAYS.

Commentary: At the supervising officer's discretion, laboratory personnel may be authorized to discard a positive specimen at any time during the 90-day period. Such authorization may occur as a result of a juvenile's admission, final court disposition, or as a determination by agency personnel that the specimen will not be used in a legal proceeding.

17–19. WITHIN THE 90-DAY PERIOD, THE SUBMITTING OFFICER MAY REQUEST THAT THE TEST SITE RETAIN THE SPECIMEN FOR AN ADDITIONAL PERIOD OF TIME; FOR EXAMPLE, UNTIL DATE OF HEARING.

Commentary: If no such request is received, the test site may discard the specimen after 90 days. Test sites may be required to maintain any specimens under legal challenge for an indefinite period. Test sites will need adequate refrigerator and freezer capacity to store specimens. Refrigeration will also be needed for the chemicals used in the testing procedures.

The number of refrigerators and freezers needed will depend on the estimated number of specimens received per month and the positive rate of these specimens. In general, two 15- to 20-cubic-feet refrigerators and two 15.1-cubic-feet freezers will be needed to handle the storage demand for a test site that averages 750 specimens per month.

17–20. NEGATIVE SPECIMENS SHOULD NOT BE STORED AND CAN BE DISCARDED IMMEDIATELY UPON IDENTIFYING THE NEGATIVE RESULTS FROM THE TEST.

17–21. REFRIGERATORS AND FREEZERS SHOULD BE SECURED WITH A LOCK, IN ADDITION TO THE ROOM LOCK, WHEN THE TEST SITE IS NOT IN USE.

Commentary: Refrigerators often come with locks built in; however, a large chain wrapped around the refrigerator and locked with a padlock may offer more security.

Onsite Instrument-Based Testing Analysis Procedures

17–22. RELIABILITY AND VALIDITY OF RESULTS: ONSITE TESTING PERSONNEL SHOULD MAINTAIN STRICT ADHERENCE TO SUPPLIERS' PROCEDURES REGARDING ASPECTS OF THE ANALYSIS PROCESS.

Commentary: Failure to comply with specific suppliers' procedures could result in the challenge of the reliability and validity of the test results in court, and the judgment that the results are inadmissible as evidence in a revocation hearing. The use of nontechnical personnel to run the testing instruments in no way reduces the established reliability and validity of an existing methodology as long as the test site's operating procedures comply with the manufacturers' procedures.

17–23. AGENCY PERSONNEL SHOULD DETERMINE THE THRESHOLD LEVELS TO BE USED FOR EACH DRUG BEING TESTED AND FOR EACH PURPOSE OF TESTING; FOR EXAMPLE, INITIAL TESTING, CONFIRMATORY TESTING, AND INHOUSE DISCIPLINARY ACTION VERSUS COURT ACTION.

17–24. AGENCY PERSONNEL SHOULD USE THE SUPPLIERS' RECOMMENDATION FOR THE DEFENSIBLE CUTOFF LEVELS FOR THEIR INSTRUMENTATION IN DETERMINING THE CUTOFF LEVEL FOR EACH DRUG BEING TESTED.

Commentary: Most manufacturers have adapted their methodologies to the cutoff levels established by NIDA and they will recommend using these cutoffs for probation and parole drug testing settings. However, these guidelines did not take into account the advancement of some technologies to identify drug metabolites at lower threshold levels. For juvenile probation or parole agencies, the ability to identify drug use at low levels accurately may assist in the management of the drug abusing juvenile.

Agencies exploring threshold issues need to make certain they use the cutoff level which the manufacturer will support in court. Therefore, each agency will need to determine what is the most useful and defensible cutoff level to use for its testing needs.

Quality Assurance

Quality assurance is the drug testing program protocol instituted to assure day-to-day reliability and validity of test results. Some of the quality assurance procedures will vary depending on the instrumentation used. The manufacturer will be the most appropriate resource for establishing most of the quality assurance procedures such as quality control steps, maintenance schedules, and logs.

There are other quality assurance procedures to which agencies must adhere to establish a credible testing program. Participation in a recognized performance test system can be set up through organizations such as the American Society of Clinical Pathologists (ASCP) or the American Association of Bio-Analysts (AABA). This performance test will consist of identifying a set number of blind specimens to verify that both operator and machine are operating accurately. A performance record of these tests should be kept at the test site.

17–25. THE ONSITE INSTRUMENT-BASED TESTING FACILITY SHOULD ESTABLISH PROCEDURES TO ASSURE DAY-TO-DAY RELIABILITY OF TEST RESULTS.

17–26. QUALITY ASSURANCE PROCEDURES SHOULD INCLUDE PARTICIPATION IN A MONTHLY PROFICIENCY SURVEY (PERFORMANCE TEST).

Commentary: Performance tests consist of identifying a set number of blind specimens to verify that both operator and machine are operating accurately. Performance testing can be set up with one of the organizations mentioned above. Reports of the results of the performance tests will be kept onsite, as well as be forwarded to the agency authority responsible for monitoring the onsite facility's performance for review and appropriate action.

17–27. QUALITY ASSURANCE PROCEDURES SHOULD INCLUDE QUARTERLY TESTING OF KNOWN POSITIVE SPECIMENS WHICH HAVE BEEN FROZEN.

17–28. QUALITY ASSURANCE PROCEDURES SHOULD INCLUDE ROUTINE PERFORMANCE OF A PARTIAL REANALYSIS OF SPLIT SAMPLES ON AT LEAST 1 PERCENT OF THE TESTS RUN.

Commentary: At least 1 percent of the specimens collected should be split-specimen collections, with appropriate chain of custody and sealed containers. The onsite facility should analyze one of the two concurrently collected specimens. The facility should submit the alternate specimen to a certified laboratory for analysis (including screening and confirmation). Reports of both testing results should be forwarded to the agency authority responsible for monitoring the onsite facility's performance for review and appropriate action.

17–29. QUALITY ASSURANCE PROCEDURES SHOULD INCLUDE ADHERENCE TO AND DOCUMENTATION OF EQUIPMENT MAINTENANCE AND DAILY QUALITY CONTROL PROCEDURES.

17–30. QUALITY ASSURANCE PROCEDURES SHOULD BE DOCUMENTED ON APPROPRIATE FORMS AND BE AVAILABLE FOR INSPECTION OR COURT EVIDENCE IF NEEDED.

17–31. ONSITE INSTRUMENT-BASED TESTING SHOULD FOLLOW SUPPLIERS' ESTABLISHED QUALITY CONTROL REQUIREMENTS AND SHOULD DOCUMENT THE RESULTS FROM THE QUALITY CONTROL REQUIREMENTS.

Commentary: Quality control is part of the quality assurance protocol that consists of running a certain number of standard controls, which are known substances at known values, to assure calibration curves are producing correct results. Again, the quality control requirements will vary depending on the instrumentation used. The manufacturer has the responsibility for developing quality control requirements specific to the equipment. Deviations from these requirements could result in inaccurate test results, and the manufacturer's failure to support the test site's results in the event of a court challenge.

17–32. FALSE POSITIVES: IN THE EVENT A PERFORMANCE TEST REVEALS THE TEST SITE HAD A FALSE POSITIVE, IMMEDIATE ACTION (AS SET BY THE JUVENILE PROBATION OR PAROLE AUTHORITIES RESPONSIBLE FOR THE TEST SITE) SHOULD BE TAKEN TO IDENTIFY THE PROBLEM.

17–33. ACTION TAKEN DUE TO A FALSE POSITIVE SHOULD BE DOCUMENTED AND AT A MINIMUM INCLUDE:

- Retesting the specimen.
- Checking for operator error.
- Contacting supplier for information.
- Placing a temporary hold on testing with the particular drug assay that produced the false positive unless a confirmatory method is used until the problem is resolved.

Commentary: A false positive could result for a variety of reasons including operator error, improper storage of specimens, assay contamination, possible adulteration of specimen, or weakness in the methodology. No methodology can ensure 100-percent accuracy. Once the problem is identified, probation or parole authorities must make the decision of when to resume normal testing for the particular drug. Test sites may choose to have confirmatory tests run on GC/MS initially to increase confidence in the test.

Reviewing Results

17–34. IN THE EVENT THE TEST SITE IS ASKED TO RETEST A POSITIVE SPECIMEN, AND REVIEW OF PERTINENT DATA REVEALS THAT THE RESULT IS SCIENTIFICALLY INSUFFICIENT FOR FURTHER ACTION, THE TEST SITE SHOULD DECLARE THE SPECIMEN NEGATIVE AND CONTACT THE REQUESTING OFFICE WITH THE INFORMATION.

Commentary: There may be several instances that require a test site to retest a positive specimen. The site may be asked to retest a positive result on the same instrument, which may provide a confirmatory option acceptable to local courts. A question may arise regarding the accuracy and validity of a positive result, or a noninstrument-based test may have been used as the initial test and a positive result was sent to the test site for a confirmatory procedure. In these instances, the test site should be prepared to handle these requests and should maintain the same guidelines which apply to initial testing. It is important to realize that some analytes will deteriorate or become lost during freezing or storage of the specimen. Therefore, retesting may not provide data sufficient to confirm the presence of the drug or metabolite, and test sites would then have to declare this specimen negative.

Court Challenges

17–35. IN THE EVENT THERE IS A COURT CHALLENGE TO THE VALIDITY OF A POSITIVE RESULT, RETESTING SHOULD BE CONSIDERED AS AN OPTION.

17–36. AGENCY STAFF SHOULD ESTABLISH POLICIES FOR HANDLING COURT CHALLENGES TO TEST RESULTS, AND ONSITE STAFF SHOULD BE PREPARED TO PROVIDE EVIDENCE TO SUPPORT THE RESULTS PROVIDED.

17–37. IN THE EVENT THAT CHALLENGES ARISE TO THE VALIDITY AND RELIABILITY OF THE TEST RESULTS, THE RESPONSIBILITY FOR PROVIDING EXPERT TESTIMONY SHOULD BE SHARED BY THE SUPPLIER OF THE INSTRUMENT USED BY THE TEST SITE.

Commentary: Drug test suppliers may have generous claims about their products' reliability. Test reliability is a technical area which the agency is not prepared to confirm or disprove. It should be the responsibility of the supplier to establish the reliability of the product. This expertise should be furnished at no expense to the agency and should be contained in a contract entered into with the supplier prior to using the drug test. If the drug test is conducted by an outside agency instead of onsite by the juvenile probation or parole department, the same stipulation regarding expert testimony should be in a contract with the outside agency.

Test site personnel should be knowledgeable about juvenile court requirements for drug testing in the area they service. The handling of court challenges will vary greatly from agency to agency, depending on local policies, legal mandates, and court acceptance of test results. Test sites will need to work within the parameters set by the courts for admissibility of tests as evidence. Suppliers should provide valuable resources such as expert testimony to help support test sites through any court challenges to test results. Strict adherence to manufacturer's requirements on testing procedures is critical.

Testifying

17–38. ONSITE TESTING STAFF AND SUPPLIER REPRESENTATIVES SHOULD BE PREPARED TO PROVIDE EXPERT TESTIMONY TO THE COURTS THEY SERVICE REGARDING TESTING PROCEDURES AND RESULTS.

Commentary: It is the responsibility of the test site to provide court testimony relevant to any issue involved with the testing of a specimen. This is often a very time consuming obligation and should be taken into account when staffing the test sites. Some courts may accept a certified copy of the test results from the laboratory as evidence. However, acceptance of the report will be determined by the local courts and when this practice is not accepted, the test site should provide this service whenever possible. It is to be understood that conflicts in court hearings will occur and onsite test personnel should try to schedule drug testing operations around court appearances.

Documentation

17–39. THE TEST SITE SHOULD MAINTAIN DOCUMENTATION ON EVERY ASPECT OF THE TESTING PROCESS, INCLUDING, BUT NOT LIMITED TO:

- The completed chain of custody documents.
- The quality assurance and quality control records such as:
  - ☐ Maintenance logs.
  - ☐ Performance, replicate, and split-specimen testing results.
- The agency and manufacturer's policy and procedures manuals.
- The test data resulting from testing instruments such as:
  - ☐ Calibration curves.
  - ☐ Computer printouts.
  - ☐ Any calculations used in determining test results.
  - ☐ Hard copies of computer generated data.
  - ☐ Copies of agency-required reports.

17–40. TEST SITES SHOULD RETAIN DOCUMENTATION FOR EVERY ASPECT OF THE TESTING PROCESS, IN ACCORDANCE WITH AGENCY POLICY ON RECORD RETENTION, FOR A PERIOD OF AT LEAST 2 YEARS.

17–41. THE RECORD RETENTION TIME PERIOD MAY BE EXTENDED UPON WRITTEN NOTIFICATION OF AGENCY SUPERIORS, AND THE TEST SITE SHOULD BE REQUIRED TO MAINTAIN DOCUMENTS FOR ANY SPECIMEN UNDER LEGAL CHALLENGE FOR AN INDEFINITE PERIOD OF TIME.

Commentary: Test site records may be provided as evidence in revocation hearings. It is important to retain these documents for at least 2 years to support juvenile probation and parole agencies and the courts. Documentation of compliance with policies and procedures will also support the test sites in the event of challenges.

17–42. THE TEST SITE SHOULD MAINTAIN BOTH THE AGENCY POLICIES AND PROCEDURES MANUAL RELEVANT TO DRUG TESTING AND THE TESTING INSTRUMENT'S PROCEDURES MANUALS ONSITE.

17–43. CHANGES MADE TO EITHER OF THESE MANUALS SHOULD BE DOCUMENTED ACCORDING TO ESTABLISHED AGENCY POLICIES.

17–44. IN THE EVENT THAT NO POLICY EXISTS, A SYSTEM FOR LOGGING THESE CHANGES SHOULD BE ESTABLISHED BY THE TEST SITE.

Commentary: Both of these manuals serve as important reference tools for onsite instrument testing personnel, and they will both require frequent updating. It is critical that onsite instrument testing personnel are kept abreast of these changes; a logging system for documenting updates will ensure compliance with changes. The documentation can also serve as evidence of compliance in the event of challenges.

17–45. TEST SITES SHOULD PROVIDE A MONTHLY STATISTICAL SUMMARY TO THE AGENCY OFFICIAL RESPONSIBLE FOR THE COORDINATION OF THE DRUG TESTING PROGRAM.

17–46. THE MONTHLY REPORT SHOULD INCLUDE, BUT NOT BE LIMITED TO:

- The number of retests run.
- The number of specimens received.
- The number of tests run per specimen.
- The number of positives and for which drugs.
- The method of confirmation used, if any, and the number of positives confirmed by this method.

Commentary: This report may also include the demographics of the population being tested, the number of court challenges that occurred, and the disciplinary action that was taken on the positive result, if known. Statistics generated from test sites can be used to summarize current abuse trends; detect changes in a trend; demonstrate the extent of the problem; and justify the need for action and support on the part of agency supervisors, legislators, and the media. Information generated can also be used by the field in the management of the drug abusing juvenile and in budgetary considerations.

Inspections

17–47. AGENCY SUPERIORS SHOULD RESERVE THE RIGHT TO INSPECT THE TEST SITE AT ANY TIME.

17–48. THE NUMBER OF INSPECTIONS WILL BE SET BY AGENCY POLICY, BUT SHOULD INCLUDE A MINIMUM OF ONE PER QUARTER.

17–49. AT THE MINIMUM, INSPECTIONS SHOULD CONSIST OF:

- The random security checks of equipment.
- The replicate testing of frozen positive specimens.
- The review of quality assurance and chain of custody documentation.
- The observation of the technician while running the instrumentation.

Commentary: To ensure compliance with policies and guidelines, agency administrators need an open-door policy concerning onsite instrument testing. Administrators need to have access to the test site to observe technicians as they operate testing instruments and handle specimens.

Protected Work Environment

17–50. ONSITE INSTRUMENT-BASED TESTING PERSONNEL SHOULD DEVELOP A BASIC SAFETY DATA SHEET TO BE INCLUDED IN THE POLICIES AND PROCEDURES MANUAL MAINTAINED ONSITE. AT THE MINIMUM, THE SAFETY DATA SHEET SHOULD INCLUDE THE FOLLOWING PRECAUTIONS:

- The use of rubber gloves and a laboratory coat during the handling of specimens.
- No smoking, eating, or drinking on the test site.
- No refrigeration of food where chemicals or specimens are stored.
- The compliance of office policy and procedures relevant to fire or other emergencies.
- The availability of goggles for handling hazardous chemicals.

Commentary: Safety is an obvious concern to any test site, and safety precautions need to be taken by onsite personnel during drug testing operations. While juvenile probation and parole test sites are not involved with hazardous chemicals often used in clinical laboratories, it is still important that drug testing personnel adhere to the basic practices established for the protection of this particular work environment. The basic safety data sheet outlines established procedures regarding the above conditions and any other areas that may be developed by the test site or agency personnel.

The supplier is often the best resource for obtaining current safety precautions in the drug testing environment. More detailed safety precautions are outlined by such organizations as OSHA or the State licensing authority, but because probation and parole test sites are reference test sites only, application of these precautions will be minimal.

Staffing for Onsite Instrument-Based Drug Testing

17–51. JUVENILE PROBATION OR PAROLE AUTHORITIES SHOULD ADEQUATELY STAFF DRUG TESTING SITES TO ENSURE CONTINUED OPERATIONS DURING THE ESTABLISHED HOURS OF OPERATION.

17–52. AUTHORITIES SHOULD CONSULT WITH THE SUPPLIER IN DETERMINING ADEQUATE STAFFING PATTERNS FOR THE INSTRUMENTATION USED.

17–53. TO DETERMINE THE STAFFING PATTERN OF THE TEST SITE, AUTHORITIES SHOULD CONSIDER THE FOLLOWING:

- The anticipated number of tests run per month.
- The anticipated number of retests run per month.

- The anticipated court testimony time requirements in the area served by the test site.
- The amount of time required to run a set number of tests on the instrumentation used.
- The other responsibilities which may be assigned to the technician(s).
- The amount of time needed for documentation of the testing procedures.
- The eligible leave time of the technician(s).

17–54. STAFF FOR DRUG TESTING PROGRAMS OF JUVENILE PROBATION OR PAROLE AGENCIES OPERATING ONSITE INSTRUMENT DRUG TESTING SHOULD CONSIST OF, AT A MINIMUM, AN AGENCY DRUG TESTING PROGRAM COORDINATOR, ONSITE DRUG TESTING MANAGER(S), AND ONSITE DRUG TESTING TECHNICIAN(S).

Commentary: In small agencies it is likely that one or two individuals may assume more than one of these roles.

A. Agency drug testing program coordinator:

17–55. THE DRUG TESTING PROGRAM COORDINATOR SHOULD BE RESPONSIBLE FOR THE COORDINATION OF THE AGENCY'S DRUG TESTING PROGRAM IN ADDITION TO OTHER ADMINISTRATIVE RESPONSIBILITIES WITHIN THE AGENCY.

Commentary: In probation or parole agencies where there is only one test site, the onsite drug testing manager may serve as the program coordinator.

17–56. IN JUVENILE PROBATION OR PAROLE AGENCIES WHERE THERE IS MORE THAN ONE TEST SITE, A CENTRAL AGENCY EMPLOYEE SHOULD BE GIVEN THE RESPONSIBILITY FOR THE COORDINATION OF THE AGENCY'S DRUG TESTING PROGRAM.

17–57. THE AGENCY DRUG TESTING PROGRAM COORDINATOR SHOULD ASSUME RESPONSIBILITY FOR THE FOLLOWING:

- The contract negotiations and renewals for testing instrumentation.
- The coordination of training for testing personnel.
- The accumulation and analysis of monthly field reports.
- The assurance that budgetary responsibilities are in compliance with agency policy.
- The monitoring of such legal issues with regard to testing methodologies, court challenges, or testifying requirements.
- The sharing in hiring decisions of staff for onsite testing, in accordance with agency policy.
- The inspection of test sites.
- The initiation of appropriate remedial action in accordance with agency policy, if test sites fail to comply with agency policy and guidelines regarding operation of the drug testing site.
- The development and implementation of agency drug testing policy.
- The evaluation and analysis of the drug testing program.
- The process of making changes in the instrumentation that is used, if needed.

17–58. IN ADDITION TO FULFILLING THE NECESSARY EDUCATIONAL AND TRAINING REQUIREMENTS IN HIS OR HER PRESENT MANAGEMENT POSITION, THE DRUG TESTING PROGRAM COORDINATOR SHOULD MEET THE SAME TRAINING QUALIFICATIONS AS THE ONSITE TESTING MANAGER.

17–59. THE PROGRAM COORDINATOR SHOULD ALSO ASSIST THE AGENCY'S TRAINING STAFF OR SUPPLIER IN THE DEVELOPMENT AND IMPLEMENTATION OF INITIAL AND INSERVICE TRAINING FOR ONSITE INSTRUMENT TESTING STAFF.

B. Onsite drug testing manager:

17–60. THE ONSITE DRUG TESTING MANAGER SHOULD ASSUME RESPONSIBILITY FOR THE FOLLOWING:

- To manage the onsite testing and other administrative responsibilities relevant to the management of the office where the test site is located.

- To ensure that there are sufficient personnel with adequate training to supervise and conduct the work of the drug testing sites.
- To assure the continued competency of onsite instrument testing personnel by documenting their inservice training, reviewing their work performance, and verifying their skills
- To take any remedial action needed with the technician(s) if disciplinary problems occur, according to agency policy.
- To ensure that a procedural manual is complete, up to date, available for personnel performing tests, and followed by personnel.
- To review, sign, and date the procedural manual whenever procedures are first placed into use or changes, or when a new individual assumes day-to-day responsibility for management of the test site.
- To maintain a quality assurance program to assure the proper performance and reporting of test results.
- To maintain acceptable analytical performance for controls and guidelines.
- To maintain quality control testing.
- To assure and document the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.
- To take any remedial actions necessary to maintain satisfactory operation and performance of the test site in response to quality control systems outside of the performance specifications, errors in result reporting, or in analysis of performance testing results.
- To ensure that specimen results are not reported until corrective actions have been taken and that the test results provided are accurate and reliable.
- To ensure that at least a 3-month supply of chemicals and needed equipment is on hand to avoid any unnecessary shutdown of the test site.

17–61. JUVENILE PROBATION OR PAROLE AUTHORITIES, IN CONJUNCTION WITH THE ONSITE DRUG TESTING MANAGER, SHOULD DECIDE WHEN THE TEST SITE WILL OPERATE AND MAKE THE FIELD STAFF AWARE OF THESE HOURS.

17–62. THE ONSITE DRUG TESTING MANAGER SHOULD BE RESPONSIBLE FOR POSTING THE HOURS OF OPERATION OF THE TEST SITE AND MAKING FIELD STAFF AWARE OF ANY CHANGES IN THE ESTABLISHED HOURS.

Commentary: The test site may operate 1 to 7 days a week depending on the volume of tests needed and the staff on hand. It is realistic to expect that hours of operation may change over time as the level of need changes.

17–63. WHEN MORE THAN ONE INDIVIDUAL IS GIVEN THE RESPONSIBILITIES OF AN INSTRUMENT DRUG TESTING TECHNICIAN FOR A TEST SITE, THE ONSITE DRUG TESTING MANAGER SHOULD ASSIGN THE PRIMARY DRUG TESTING TECHNICIAN TO BE THE TEST SITE SUPERVISOR WITH RESPONSIBILITY FOR ASSISTING THE ONSITE DRUG TESTING MANAGER IN PERFORMING RELEVANT JOB TASKS.

17–64. THE ONSITE DRUG TESTING MANAGER SHOULD MAINTAIN RESPONSIBILITY FOR DELEGATED TASKS.

Commentary: The onsite drug testing manager can delegate some of the above responsibilities to the onsite drug testing supervisor or technician.

17–65. IN ADDITION TO FULFILLING EDUCATIONAL AND TRAINING REQUIREMENTS NECESSARY FOR ASSUMING A SUPERVISORY LEVEL POSITION, THE ONSITE DRUG TESTING MANAGER SHOULD HAVE TRAINING AND EXPERTISE IN:

- The theory and practice of the procedures used on the test site and quality control practices and procedures.
- The review, interpretation, and reporting of test results.
- The maintenance of the chain of custody.
- The proper remedial actions to be taken in response to test systems that are beyond control limits.
- The detection of aberrant test or quality control results.

17–66. THE INITIAL TRAINING FOR THE ONSITE DRUG TESTING MANAGER SHOULD BE PROVIDED BY THE SUPPLIER, BUT SHOULD NOT BE AS LONG OR AS DETAILED AS THE ONSITE INSTRUMENT DRUG TESTING TECHNICIAN'S INITIAL TRAINING.

17–67. THE ONSITE DRUG TESTING MANAGER SHOULD PARTICIPATE IN 1 HOUR PER QUARTER OF INSERVICE TRAINING, WITH THE SAME CURRICULUM CONTENT AS THE ONSITE INSTRUMENT DRUG TESTING TECHNICIAN'S INSERVICE TRAINING.

17–68. THE ONSITE DRUG TESTING MANAGER SHOULD ASSIST THE SUPPLIER, DRUG TESTING PROGRAM COORDINATOR, OR AGENCY TRAINING STAFF IN DEVELOPING AND IMPLEMENTING THIS TRAINING CURRICULUM.

Commentary: At the majority of probation and parole test sites, the onsite drug testing manager will be a supervisory level manager in the office where the test site is located. This individual is usually given the responsibility of managing the test site in addition to other supervisory responsibilities within that juvenile probation or parole facility. Generally, this individual will not be trained in the actual hands-on operation of the test sites, but will have knowledge of the overall requirements of test site operations as stated in the above guidelines.

C. Onsite instrument-based drug testing technician(s)

17–69. THE TEST SITE SHOULD HAVE A QUALIFIED INDIVIDUAL(S) TO ASSUME PROFESSIONAL, ORGANIZATIONAL, AND ADMINISTRATIVE RESPONSIBILITY FOR THE DRUG TESTING SITE.

Commentary: This individual should hereafter be referred to as the technician, but may be given another appropriate title by the hiring agency.

The technician's role is the most critical to the effective operation of onsite instrument drug testing. Because onsite instrument drug testing is only an immunoassay test site and does not provide GC/MS confirmations, it is not necessary for this individual to have the same technical background as those hired in private laboratories. The ease of operating the onsite testing instrumentation allows this role to be assumed by other personnel currently on staff (such as surveillance officers or juvenile probation or parole officers), or may require the agency to hire a technician specifically for the test site.

The technician may be used in the test full-time or may assist on a part-time basis and assume other responsibilities within the agency, depending on the hours of operation and the various testing needs of the agency. Because there are so many variables involved in determining the staffing of a test site, it is difficult to provide a standard number of technicians needed for each site. It is the responsibility of authorities coordinating the drug testing program to determine the number of staff needed to comply with these guidelines.

Typically, a test site will need at least one full-time technician and one or two part-time technicians. Two full-time technicians will be needed if they are testing an average of 500-750 specimens per month and are complying with the onsite instrument drug testing guidelines.

17–70. THE TECHNICIAN SHOULD BE RESPONSIBLE FOR THE DAY-TO-DAY MANAGEMENT OF THE DRUG TESTING SITE—EVEN WHEN ANOTHER INDIVIDUAL HAS OVERALL ADMINISTRATIVE RESPONSIBILITY FOR THE TEST SITE OR OFFICE IN WHICH THE TEST SITE IS LOCATED.

17–71. THE MANUFACTURER IS RESPONSIBLE FOR PROVIDING THE TECHNICIAN WITH THE INITIAL TRAINING FOR USING AND OPERATING A TESTING INSTRUMENT.

17–72. THE TECHNICIAN SHOULD BE CERTIFIED BY THE MANUFACTURER ON HIS OR HER ABILITY TO PERFORM TESTING AND HANDLE TROUBLESHOOTING OF THE EQUIPMENT, ACCORDING TO ESTABLISHED PROCEDURES.

17–73. THE TECHNICIAN SHOULD MEET ANY EDUCATIONAL REQUIREMENTS OR OTHER QUALIFICATIONS ESTABLISHED BY THE MANUFACTURER THAT ARE NEEDED TO OPERATE THE EQUIPMENT.

17–74. DOCUMENTATION OF THE TECHNICIAN'S QUALIFICATIONS, INCLUDING RELEVANT TRAINING, SHOULD BE KEPT IN HIS OR HER PERSONNEL FILE.

17–75. RESPONSIBILITIES OF THE TECHNICIAN(S) SHOULD INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

- To order supplies and maintain inventory control.
- To receive specimens.
- To operate instruments.
- To comply with the requirements of quality assurance, quality control, and maintenance.
- To troubleshoot problems with instruments.
- To testify in court.
- To act as a consultant to juvenile probation or parole personnel on drug testing issues.
- To maintain required documentation of the testing process.
- To assist the drug testing manager as directed.

17–76. THE TECHNICIAN SHOULD COMPLETE AT LEAST 1 HOUR OF CONTINUING EDUCATION PER QUARTER.

Commentary: Training should be provided by the agency or the supplier and documented in the technician's personnel file.

17–77. THE CURRICULUM SHOULD CONSIST OF TOPICS RELEVANT TO DRUG TESTING TECHNOLOGY SUCH AS MEDICAL TECHNOLOGY, PHARMACOLOGY, BIOCHEMISTRY, CHEMISTRY, OR TOXICOLOGY.

17–78. THE CURRICULUM SHOULD CONSIST OF 50 PERCENT OF INSTRUCTION TIME AND 50 PERCENT OF HANDS-ON EXPERIENCE WITH THE DRUG TESTING INSTRUMENT AND TESTING PROCEDURES.

17–79. THE TECHNICIAN SHOULD PARTICIPATE IN ANY AGENCY-ESTABLISHED DISCUSSION GROUP OR TASK FORCE TO ELICIT FEEDBACK FROM THE FIELD ON TOPICS RELEVANT TO DRUG TESTING.

Commentary: Providing initial and inservice training for the technicians is critical when establishing effective and credible onsite instrument drug testing. Other than the initial training provided by the suppliers (which will vary in length depending on the instrumentation used), training does not always require formal lectures. Inservice training may consist of guest speakers, video tapes, slide presentations, and self-study materials, that may be provided by the agency's training staff or the supplier.

Certification

17–80. THE DRUG TESTING SITE SHOULD ATTEMPT TO BECOME CERTIFIED BY ITS STATE LICENSING AUTHORITY, WHENEVER POSSIBLE.

Commentary: It is recognized that many States have certification procedures which apply only to clinical laboratories and which would not be applicable to reference drug testing sites in a juvenile probation or parole setting. In that case, documented adherence to the manufacturer's quality assurance and control procedures offer probation and parole onsite instrument drug testing the most defensible alternative to State certification.

17–81. DRUG TESTING SITES SHOULD COMPLY WITH APPLICABLE GUIDELINES AS THEY RELATE TO ONSITE INSTRUMENT DRUG TESTING PRACTICES.

Commentary: These include such topics as reporting of results, confidentiality, confirmation, chain of custody, cutoff levels, and storage of specimens.

17–82. AGENCIES THAT CONTRACT WITH TREATMENT ALTERNATIVES TO STREET CRIME (TASC) PROGRAMS SHOULD ENSURE THAT THE GUIDELINES IN THIS SECTION ARE MET.

Commentary: Many juvenile probation and parole agencies contract with TASC programs for the delivery of drug testing services. Although this kind of contractual arrangement is acceptable, agencies should ensure that the TASC laboratory complies with the guidelines under the "Establishing Juvenile Justice Onsite Instrument Drug Testing" section.

ESTABLISHING ONSITE NON-INSTRUMENT-BASED DRUG TESTING

Advancements in drug testing technologies have provided a simple, accurate, and cost-effective initial immunoassay testing alternative for juvenile probation and parole agencies. This immediate result capability does not require the formality of an onsite instrument setting and the product usually includes the needed supplies in the form of a testing kit.

These drug tests are easily transported wherever agency personnel feel testing is warranted, in such field locations as jail, a juvenile's home, or a juvenile's place of employment. The majority of tests are likely to be administered in the probation or parole office setting.

While the relative ease of use of these products may offer an advantage to the more technical alternatives, it is still necessary to meet certain criteria to establish a defensible and reputable testing program. The following represent guidelines specifically for agencies interested in conducting onsite noninstrument-based testing.

Anticipating the Effects of Noninstrument-Based Testing

18–1. AGENCIES IMPLEMENTING ONSITE NONINSTRUMENT TESTS SHOULD TAKE INTO CONSIDERATION THE POSSIBLE EFFECTS OF SUCH TESTING AND HOW IT MAY AFFECT THE AGENCY, STAFF, AND JUVENILES.

Commentary: Agencies need to anticipate an increase in the number of drug tests performed due to the ease of use and accessibility of these noninstrument tests. The increase will have an affect on financial resources within the agency and may also affect revocation rates if steps are not taken to implement progressive sanctions and monitor adherence to established policy. Agencies should also consider the potential reduction in drug use due to the deterrent effect of these tests.

Onsite Noninstrument-Based Test Methodology

18–2. THE ONSITE NONINSTRUMENT-BASED TEST SHOULD BE AN IMMUNOASSAY WHICH MEETS THE REQUIREMENTS OF THE FOOD AND DRUG ADMINISTRATION FOR COMMERCIAL DISTRIBUTION.

18–3. THE ONSITE NONINSTRUMENT-BASED TESTS SHOULD HAVE ESTABLISHED CUTOFF LEVELS FOR THE DRUGS BEING TESTED AND SHOULD COMPLY WITH THE CUTOFF LEVELS ESTABLISHED IN THE NIDA GUIDELINES.

Commentary: Unlike some onsite-testing instrumentation, the noninstrument test comes with a set threshold level. There are no time consuming requirements for calibrating the noninstrument test. In view of the methodology in the noninstrument test, NIDA guidelines offer the most defensible threshold levels. Refer to the section on cutoff levels, specifically guideline 7–4, for exceptions.

18–4. THE ONSITE NONINSTRUMENT-BASED TEST SHOULD BE USED PRIMARILY AS AN INITIAL SCREENING TOOL.

Commentary: The noninstrument-based test serves in the same capacity as the onsite instrument-based drug testing site in terms of providing initial test results. The purpose of this test is to eliminate negative specimens from further consideration and to identify positive specimens. However, the noninstrument-based test can also serve in a juvenile probation and parole confirmatory capacity, as described in the confirmation section of these guidelines.

The noninstrument-based test will permit immediate feedback for both the tester and the juvenile. The noninstrument test, if negative, permits the officer to acknowledge success by the juvenile and to move to other areas of concern. If positive, the officer and the juvenile can address the issue immediately.

86

Staffing Requirements

18–5. THE AGENCY SHOULD APPOINT AN ONSITE NONINSTRUMENT TESTING SPECIALIST AT EACH OFFICE OR FACILITY USING ONSITE NONINSTRUMENT DRUG TESTING.

18–6. THE ONSITE NONINSTRUMENT TESTING SPECIALIST SHOULD HAVE PRIMARY RESPONSIBILITY FOR THE ONSITE NONINSTRUMENT TESTING AT THAT SITE, WHICH INCLUDES THE FOLLOWING:

- To order supplies.
- To complete necessary documentation for testing.
- To work directly with the agency drug-testing coordinator.
- To ensure that controls have been run before testing any specimens.
- To maintain the chain of custody documents and evidence log sheets.
- To ensure that equipment is properly handled, stored, and maintained.
- To run the tests or check testing supplies out to other qualified operators.

18–7. THE AGENCY SHOULD IDENTIFY AT LEAST ONE RESERVE ONSITE TESTING SPECIALIST AT EACH OFFICE OR FACILITY USING THE ONSITE NONINSTRUMENT TEST TO COMPLETE THE ABOVE TASKS IN THE ABSENCE OF THE PRIMARY SPECIALIST.

Commentary: The test specialist is a slightly different role than the technician identified for the more formal onsite instrument drug testing setting. The testing specialist's responsibilities can be given to and shared among any qualified officers, in addition to their regular duties, because the onsite noninstrument tests operating requirements are minimal and not as time consuming as the more formal onsite instrument drug testing systems.

18–8. AGENCY AUTHORITIES AT EACH OFFICE OR FACILITY USING THE ONSITE NONINSTRUMENT TEST MAY IDENTIFY OTHER PROBATION PERSONNEL AS TESTING OPERATORS, DEPENDING ON THE TESTING NEEDS OF THE AGENCY.

18–9. TESTING OPERATORS SHOULD COORDINATE USE OF THE TESTING EQUIPMENT THROUGH THE IDENTIFIED TEST SPECIALIST(S).

Commentary: Due to an agency's heavy testing needs, authorities may need to appoint more operators to run the onsite noninstrument tests. However, it is critical that these operators work through the test specialist to ensure proper use of the equipment and correct documentation of the testing.

18–10. AN AGENCY DRUG TESTING PROGRAM COORDINATOR SHOULD BE RESPONSIBLE FOR THE COORDINATION OF THE AGENCY'S DRUG TESTING PROGRAM AND OTHER ADMINISTRATIVE RESPONSIBILITIES WITHIN THE AGENCY.

Commentary: The program coordinator should assume applicable responsibilities identified in the onsite instrument drug testing guidelines.

Training and Qualifications of Testing Personnel

18–11. PERSONNEL WHO WILL BE OPERATING THE ONSITE NONINSTRUMENT TESTS SHOULD BE TRAINED AND CERTIFIED IN THE USE AND OPERATION OF THE TEST INSTRUMENT BY THE SUPPLIER OR A QUALIFIED REPRESENTATIVE.

18–12. TRAINED PERSONNEL SHOULD KNOW ABOUT RESOURCES AVAILABLE TO THEM IN THE EVENT A PROBLEM ARISES IN USING THE TEST.

Commentary: Manufacturers of the noninstrument tests have developed the appropriate training required to conduct the tests. These companies have established a system for field staff to obtain technical assistance through the use of 800 telephone numbers and local representatives.

Location

18–13. AGENCY AUTHORITIES SHOULD IDENTIFY APPROVED SITES FOR USING THE ONSITE NONINSTRUMENT TEST AND THESE SHOULD BE REFERRED TO AS ONSITE NONINSTRUMENT TEST SITES.

87

Commentary: The compactness of the noninstrument tests will enable staff to transport the testing equipment and run the tests in a variety of locations. Typically, such sites may be the probation or parole office or facility, a local jail, a juvenile's home, or the juvenile's place of employment. The sites should be identified and approved by agency authorities to ensure safety and to avoid excessive or improper use of the equipment by qualified personnel running the tests. When possible, these sites should be located where there is access to a collection site so that the test can be run immediately after receiving the specimen to avoid unnecessary chain of custody delays.

18–14. AGENCY AUTHORITIES SHOULD IDENTIFY A SPECIFIC AREA IN ANY JUVENILE PROBATION OR PAROLE OFFICE OR FACILITY USING THE NONINSTRUMENT TEST FOR STORAGE OF TESTING EQUIPMENT, RELATED DOCUMENTATION, AND REFRIGERATION.

Commentary: The space required for using the noninstrument test will be much less than is needed for a formal onsite instrument drug testing. However, the same precautions and criteria outlined in the onsite instrument guidelines on storage should also apply. Therefore, it will be important for agency authorities to approve collection of the specimen at various locations, such as the jail, the juvenile's home, or the juvenile's place of employment.

Security

18–15. THE REFRIGERATOR USED TO STORE SPECIMENS SHOULD BE SECURED WHEN AUTHORIZED TESTING PERSONNEL ARE NOT PRESENT.

18–16. THE TESTING SUPPLIES AND DOCUMENTATION RECORDS SHOULD BE STORED IN A ROOM WHERE TESTING PERSONNEL CAN CONTROL THE ACCESS TO THE PREMISE TO ENSURE THAT NO UNAUTHORIZED INDIVIDUALS HANDLE SPECIMENS, SUPPLIES, OR TESTING RECORDS.

Commentary: While the noninstrument tests do not require an onsite drug testing room to operate the tests, it is still important to take basic security measures with supplies, urine, and records. Refrigerators can be secured with a chain wrapped around the outside of the refrigerator and locked with a padlock. Testing supplies, specimens, and records should be inaccessible to the normal daily traffic flow within the site.

Collection and Transportation

18–17. SPECIMENS SHOULD BE COLLECTED IN COMPLIANCE WITH APPA GUIDELINES FOR COLLECTION AND OBSERVATION, WHEN APPLICABLE.

18–18. JUVENILE PROBATION AND PAROLE COLLECTION PERSONNEL SHOULD MONITOR THE JUVENILE THROUGHOUT THE COLLECTION PROCESS.

Commentary: Because the noninstrument test can be used outside the juvenile probation or parole office, a rest room designated for the sole purpose of collecting specimens will not always be available.

18–19. IF THE SPECIMEN IS BEING TRANSPORTED TO ANOTHER LOCATION, THE SPECIMEN MUST BE HANDLED ACCORDING TO THE ESTABLISHED APPA CHAIN OF CUSTODY GUIDELINES.

Chemical Storage

18–20. THE CHEMICALS REQUIRED TO RUN THE TESTS SHOULD BE REFRIGERATED ACCORDING TO THE MANUFACTURER'S INSTRUCTIONS.

Commentary: It is important that the refrigerator is set at the temperature recommended by the manufacturer. Temperatures that are not set at the recommended setting may affect the performance of the chemicals used.

Juvenile probation and parole offices with noninstrument test capability will need to have enough refrigerator and freezer capacity to store their specimens. These offices will usually perform tests for that particular juvenile probation or parole site, as opposed to handling large volumes of testing from a variety of sites. Therefore, it is usually possible to meet the storage requirement with a small refrigerator.

Testing Operations

18–21. QUALIFIED TESTING PERSONNEL SHOULD MAINTAIN STRICT ADHERENCE TO SUPPLIER'S PROCEDURES REGARDING ASPECTS OF TESTING OPERATIONS IN ORDER TO ENSURE THE RELIABILITY AND VALIDITY OF TEST RESULTS.

Commentary: The ease of operating the noninstrument test in no way reduces the established reliability and validity of the noninstrument test methodology, as long as testing personnel comply with the manufacturer's established procedures. Failure to comply with specific manufacturer procedures could result in the challenge of the reliability and validity of the test results. In the event that challenges to the testing methodology occur, the manufacturer will be able to assist in providing court testimony to support the methodology, if the correct procedures have been followed by testing personnel.

Caution: The simplicity of operating these tests may cause personnel to become careless when handling chemicals. Therefore, it is important that an onsite noninstrument test specialist(s) be made responsible for the testing at each site, to ensure careful handling of the testing equipment.

Number of Tests per Specimen

18–22. ONSITE NONINSTRUMENT TEST SITES SHOULD RUN ROUTINE PARTIAL SCREENS ON EACH SPECIMEN AND AGENCY POLICY SHOULD BE ESTABLISHED REGARDING THE FREQUENCY OF RANDOM FULL SCREENS.

Commentary: Partial screens consist of testing for one to three illegal drugs, depending on the most abused drugs currently used by the juvenile population, the juveniles' drugs of choice, and the funds of the agency. The ability to run a full screen for at least five illegal drugs on each specimen will depend on agency resources and on the capability of the noninstrument test to detect this many drugs.

Noninstrument testing technology is currently based upon testing for one drug at a time, unlike the more formal onsite instrument drug testing, which can run full screens automatically. Because of the storage and shelf life limitations of the noninstrument tests, it may not always be economical to run frequent random full screens. Therefore, agency policy should dictate the frequency of full screens.

It is critical that an agency should attempt to run some random full drug screens (technology permitting) to identify the current drugs of choice and detect changes in drug use trends. However, inability to run frequent full screens does not necessarily decrease the effectiveness of the testing program. Significant resources can be saved by primarily conducting partial screens.

Quality Assurance

18–23. TESTING PERSONNEL SHOULD COMPLY WITH APPA QUALITY ASSURANCE GUIDELINES 17–25 THROUGH 17–30 FOR ONSITE INSTRUMENT-BASED TESTING.

Quality Control

18–24. TESTING PERSONNEL SHOULD COMPLY WITH THE MANUFACTURER'S ESTABLISHED QUALITY CONTROL PROCEDURES.

18–25. TESTING EQUIPMENT SHOULD NOT BE USED PAST THE EXPIRATION DATE.

Commentary: The simplicity of noninstrument tests greatly reduces the need for lengthy quality control procedures. Quality control typically may consist of running a negative control before testing a specimen. A negative control consists of testing a known substance (the control) to ensure the chemicals are producing correct results.

Testifying

18–26. QUALIFIED SPECIALISTS OR OPERATORS AND THE NONINSTRUMENT TEST MANUFACTURER SHOULD BE RESPONSIBLE FOR PROVIDING NEEDED COURT TESTIMONY ON TEST RESULTS.

Commentary: One of the advantages of the noninstrument test is that a supervising officer who is qualified to run the test can either provide the needed testimony at a revocation hearing or has easy access to the testing operators who can testify for their office or facility. In this way, the problems and delays associated with the more formal onsite instrument drug testing in subpoenaing technicians are avoided.

Confrontation

18–27. TESTING PERSONNEL CHOOSING TO CONDUCT THE TEST IN FRONT OF THE JUVENILE SHOULD BE PREPARED TO CONFRONT THE JUVENILE IMMEDIATELY IN THE EVENT OF A POSITIVE RESULT.

Commentary: Running the test in front of the juvenile greatly increases the amount of admissions obtained, which may cut down on the need for other confirmatory options. Obtaining the admission is also the most economical and preferred method of confirming positives.

The reason for the increase in admissions when using the noninstrument drug test, as opposed to an onsite instrument drug test or outside laboratory, is that the denial stage is reduced. The juvenile cannot blame the positive result on mix-ups in the laboratory or the chain of custody procedures. The juvenile may deny use when the noninstrument test begins, but within a few minutes—before the result is evident—he or she often confesses drug use.

18–28. IF THE TEST IS NOT CONDUCTED IN FRONT OF THE JUVENILE, A POSITIVE RESULT SHOULD STILL REQUIRE SUPERVISING PERSONNEL TO CONFRONT THE JUVENILE WITHIN 72 HOURS OF RECEIVING THE RESULTS.

Safety Issues for Testing Personnel

18–29. TESTING PERSONNEL SHOULD MAKE A DECISION TO RUN THE TEST IN FRONT OF A JUVENILE AT THEIR OWN DISCRETION, IF AGENCY POLICY PERMITS.

Commentary: Caution should be taken by testing staff in making this decision, particularly when it involves a juvenile who may be under the influence of drugs or has a violent history.

18–30. TESTING PERSONNEL SHOULD MAKE A DECISION TO TEST A JUVENILE IN THE JUVENILE'S HOME OR SOME OTHER NON-SECURED LOCATION AT THE TESTING STAFF'S DISCRETION, IF AGENCY POLICY PERMITS.

Commentary: Caution should be taken by testing staff in making this decision, particularly when it involves a juvenile who may be under the influence, or has a violent history, or where family and friends of the juvenile are present.

18–31. TESTING PERSONNEL SHOULD IMPLEMENT BASIC SAFETY AND CRISIS INTERVENTION PROCEDURES IN COMPLIANCE WITH AGENCY POLICY TO REDUCE ANY THREAT AND ENSURE NONINSTRUMENT TEST SITE SAFETY.

Commentary: Safety is a critical concern in any juvenile probation and parole activity. Confronting the juvenile immediately with test results can be a potentially threatening experience which may lead to the juvenile acting out. However, experience with running these tests shows that juveniles usually become complacent rather than becoming offensive due to the reduction in their denial stage. They tend to be more willing to comply with any sanctions imposed because they know they were "caught in the act," and they hope to reduce the severity of the sanctions imposed by cooperating with the officer.

Basic office and field visit safety policies should already be established for the agency. Implementing noninstrument testing capability into the office or field visit routine should require only that testing staff are reminded of these policies, adjusting such policies as applicable to a testing confronting situation.

Protected Work Environment

18–32. BASIC SAFETY PRECAUTIONS SHOULD BE TAKEN BY NONINSTRUMENT TESTING PERSONNEL DURING THE OPERATION OF THE TEST. AT THE MINIMUM, THESE PRECAUTIONS SHOULD INCLUDE:

- The use of rubber gloves while handling specimens.

- No smoking, eating, or drinking at the testing site.
- No refrigeration of food where chemicals or specimens are stored.
- The compliance with office safety policies.

Commentary: Safety of the work environment is an obvious concern when conducting any type of drug testing. However, the noninstrument test does not require as many protected work environment precautions as the more formal onsite instrument drug testing because of its simplicity.

Documentation/Chain of Custody Requirements

18–33. NONINSTRUMENT TEST SITES SHOULD MAINTAIN DOCUMENTATION ON EVERY ASPECT OF THE TESTING PROCESS.

18–34. A MINIMUM OF THREE DOCUMENTS SHOULD BE USED TO DOCUMENT NONINSTRUMENT TESTING ACTIVITIES. THESE INCLUDE:

- The Request For Drug Testing Form.
- An Evidence Log Sheet.
- The Agency Monthly Report.

18–35. AGENCY PERSONNEL REQUESTING A DRUG SCREEN SHOULD COMPLETE THE REQUEST FOR A DRUG TESTING/CHAIN OF CUSTODY FORM ACCORDING TO AGENCY POLICY.

Commentary: This should be done to maintain the control and accountability of specimens, from the collection through the completion of testing, and includes:

- Storage.
- Reporting of results.
- Transportation (if any).
- Final disposition of specimens.

18–36. THE DATE AND PURPOSE SHOULD BE DOCUMENTED ON AN APPROPRIATE CHAIN OF CUSTODY FORM WHEN THE SPECIMEN IS RECEIVED AND EACH TIME A SPECIMEN IS TRANSFERRED. EVERY INDIVIDUAL IN THE CHAIN OF CUSTODY SHOULD BE IDENTIFIED.

18–37. WHEN SPECIMENS ARE RECEIVED FROM ANOTHER OFFICE OR FACILITY, TESTING PERSONNEL SHOULD ACKNOWLEDGE RECEIPT ON THE CHAIN OF CUSTODY FORM AND PROVIDE A COPY TO THE DELIVERER.

18–38. TESTING PERSONNEL SHOULD INSPECT EACH PACKAGE FOR EVIDENCE OF POSSIBLE TAMPERING AND COMPARE INFORMATION ON THE ACCOMPANYING CHAIN OF CUSTODY FORM.

18–39. ANY DIRECT EVIDENCE OF TAMPERING OR DISCREPANCIES WITH INFORMATION ON SPECIMEN BOTTLES OR ON THE AGENCIES' CHAIN OF CUSTODY FORM ATTACHED TO THE SHIPMENT SHOULD BE REPORTED IMMEDIATELY TO THE SUBMITTING OFFICE. THIS VARIANCE SHOULD BE NOTED ON THE CHAIN OF CUSTODY FORM THAT ACCOMPANIES THE SPECIMENS WHILE THEY ARE AT THE NONINSTRUMENT TEST SITE.

18–40. CHAIN OF CUSTODY FORMS SHOULD BE FILED AT THE TESTING SITE.

Commentary: The primary responsibility for chain of custody forms belongs to the designated drug testing specialist(s) at the site, but the forms may also be completed by other qualified testing personnel. Noninstrument test sites should comply with APPA chain of custody guidelines. It is critical to the credibility of the noninstrument test site that the same rigorous chain of custody procedures which are followed when using the more formal onsite instrument-based drug testing are also maintained while specimens are at the noninstrument test sites.

18–41. AN EVIDENCE LOG SHOULD BE MAINTAINED WITH THE TESTING SUPPLIES FOR THE PURPOSE OF DOCUMENTING THE DRUG TESTING OPERATIONAL PROCESS.

18–42. FORMS SHOULD BE COMPLETED BY ANY TRAINED PERSONNEL RUNNING THE TEST; HOWEVER, THE IDENTIFIED DRUG TESTING SPECIALIST(S) HAS PRIMARY RESPONSIBILITY OF ENSURING THE ACCURATE COMPLETION OF THE DOCUMENT.

18–43. AT THE MINIMUM, THE EVIDENCE LOG SHOULD INCLUDE THE FOLLOWING INFORMATION:

- The test results.
- The date the test results were received.
- The time and date the specimen was collected.
- The indications that the established quality control measures were taken.
- The juvenile's name and case number.
- The collection person's name.
- The drugs tested for.
- The indication of a confirmatory option that may have been used:
  - ☐ The retests run.
  - ☐ The admission received.
  - ☐ The location of other testing sites if used.
  - ☐ The documentation of the date the specimen was sent to another site.
  - ☐ The date results were received from the confirmatory method.
- The date the specimen was disposed.

Commentary: The log may also document demographics of the population tested, disciplinary action taken on positive screens, and court challenges that may have resulted.

18–44. EACH JUVENILE PROBATION OFFICE, PAROLE OFFICE, OR FACILITY SHOULD PROVIDE A MONTHLY STATISTICAL SUMMARY OF DRUG TESTING TO THE AGENCY DRUG TESTING PROGRAM COORDINATOR. AT A MINIMUM, THE SUMMARY SHOULD INCLUDE THE FOLLOWING INFORMATION:

- The number of tests run.
- The number of positives and for which drugs.
- The number of admissions received.
- The method of confirmatory options taken, if any, and the number of positives confirmed by this option.

Commentary: This report may also include the demographics of the population being tested, disciplinary action taken for positive results, and the number of court challenges that occurred.

Statistics generated from the noninstrument-based test site can be used to summarize current abuse trends, detect changes in trends, demonstrate the extent of the problem, and justify the need for action and support on the part of agency supervisors, legislators, and the media. Information generated can also be used by the field in the management of the drug abusing juvenile and in budgetary considerations.

Compliance With Other Testing Guidelines

18–45. NONINSTRUMENT-BASED TEST SITES SHOULD COMPLY WITH ANY OTHER APPA DRUG TESTING GUIDELINES WHICH MAY BE APPLICABLE.

Commentary: This includes such topics as the reporting of results, cutoff levels, chain of custody, storage, confirmation, and confidentiality.

DRUG TESTING COSTS

The purpose of this section is to assist planners and policymakers in determining how much it will cost to implement a drug testing program in their jurisdiction.

When implementing a drug testing program or enlarging an existing one, every juvenile probation and parole agency will face the problem of securing the needed financial resources. There are a number of critical elements which agency planners should consider when developing a drug testing program. This section addresses those issues to help agencies focus on options that are both cost-effective and responsive to the agency's drug testing goals and objectives.

There are two sets of factors, jurisdictional and procedural, which will assist the agency in estimating drug testing costs.

Jurisdictional factors include:

- The salaries the agency pays its employees.
- The rate of drug abuse within the population.

  NOTE: The Drug Use Forecasting (DUF) project is generating useful data that can be used to project the positive test rate during the planning process. Any jurisdiction may use DUF results for estimating costs by selecting several of the DUF participating sites whose general characteristics are similar to those of the jurisdiction planning a program.

  The percentage of the targeted population which will test positive for drug use will affect costs. An agency whose target population tests positive 70 percent of the time will have program costs exceeding a comparable agency where only 30 percent test positive.

- The size of the juvenile probation or parole population.
- The length of time for monitoring and supervising each case.

Procedural factors include:

- The frequency of random drug testing.

  NOTE: Drug testing program planners should determine what percentage of the juvenile probation and parole population will be tested. Will those testing positive during the presentence investigation, intake, or agency assessment phase become part of a random drug testing program? Will only a portion of the population testing positive be selected for testing? An agency can reduce its costs by limiting the populations targeted for testing.

- The number of drugs for which the program will test.

  NOTE: Full drug screens generally include five to seven drug categories. Some agencies may opt to conduct a full drug screen initially and then select which drugs to test for on a case-by-case basis.

- The size of the population that will be targeted for testing.
- The scheme of sanctions for violations of the testing conditions.
- The costs of contracting to an outside testing laboratory versus establishing onsite instrument-based testing capabilities.
- The methodology used.
- The extent to which initial positive tests are confirmed.

19–1. DRUG TESTING SHOULD BE CONDUCTED IN A COST-EFFECTIVE MANNER AND A COST SHEET COMPARISON SHOULD BE REVIEWED PRIOR TO MAKING A DECISION CONCERNING WHICH TYPE(S) OF JUVENILE JUSTICE DRUG TESTING OPTIONS TO USE.

Commentary: Agencies should employ drug testing strategies which allow maximum utilization of the agency drug testing budget, within the parameters of the established needs and goals of the testing program. To facilitate efficiency, each agency should determine:

- The program costs.
- The basic drug screens to be conducted.
- The drug testing schedules.
- The drugs of choice within the agency's jurisdiction.
- The feasibility of onsite instrument-based drug testing versus contracting drug testing services.

In determining which option is more economical for meeting the projected program needs, planning and budget personnel should review several testing factors which will affect the cost of their program by comparing the costs involved with each testing service option. The cost sheet comparison should include cost factors associated with the following:

- The chain of custody procedures.
- The certification requirements.
- The training requirements.
- The personnel needed.
- The calibration of instruments.
- The ancillary supplies needed.
- The turnaround times.
- The need for confirmations.
- The retesting of results required by the manufacturer.

19–2. AN ADMINISTRATIVE PLAN AND BUDGET FOR THE DRUG TESTING PROGRAM SHOULD BE ESTABLISHED.

Commentary: The plan and budget should, as nearly as possible, cover the entire program for the next 1 to 3 years and consider the following:

- The costs:
  - ☐ Equipment.
  - ☐ Operations.
  - ☐ Incidental.
- The personnel.
- The storage space.
- The specimen collection facilities.
- The laboratory space (if onsite instrument-based drug testing).
- The contracting of laboratory drug testing services.
- The confirmation procedures.

19–3. A WRITTEN DIRECTIVE SHOULD EITHER AUTHORIZE OR PROHIBIT THE USE OF FEES FOR GENERATING REVENUE FOR DRUG TESTING.

19–4. A PROJECTION OF THE PERCENTAGE OF THOSE TESTED THAT WILL REQUIRE GRADUATED OR INTERMEDIATE SANCTIONS SHOULD BE MADE.

Commentary: Increased testing and other progressive sanctions for juveniles with positive test results will be more costly than for those juveniles who comply with the conditions of juvenile probation and parole.

19–5. STRICT ADHERENCE TO THE REQUIRED QUALITY ASSURANCE, QUALITY CONTROL, AND CONFIRMATION POLICIES OF A PROGRAM SHOULD BE SUPPORTED IN THE BUDGET AND MAINTAINED BY THE AGENCY.

Commentary: It is critical for the defensibility, credibility, and integrity of an agency's drug testing program that the quality assurance, quality control, and confirmation policies be maintained despite financial restraints. These policies should be given primary consideration and the budget should be built around the policies. In the event of limited funding, it is recommended that agencies reduce the amount of their testing capability rather than compromise on their quality assurance, quality control, or confirmation policies.

MANAGEMENT INFORMATION SYSTEMS

It is essential that test results be recorded correctly and in a timely manner. Mechanisms should be established to allow agency officials and other appropriate parties to audit recording practices whenever test results are challenged.

20–1. JUVENILE PROBATION AND PAROLE AGENCIES SHOULD REGULARLY MONITOR AND EVALUATE THE UTILITY AND EFFECTIVENESS OF THEIR DRUG TESTING PROGRAM.

Commentary: Research should be conducted on the relationship between illegal drug use and the violation of conditions of juvenile probation or parole. The agency might find it useful to maintain data on how positive drug test results might be used to project future violations of probation or parole.

Juvenile probation and parole agencies considering drug testing should document the presence of illegal drug use in the population. After bringing a drug testing program into operation, mechanisms should be established to document program practices and measure program effectiveness. Every agency in government is in competition with other government agencies and programs for limited resources. Agencies should be able to show policymakers that drug testing programs are functioning efficiently and effectively. An agency desiring continued or increased resources should show that its intervention strategies are producing the desired results. Records should be maintained which indicate:

- The caseload levels.
- The recidivism rates.
- The number of juveniles under drug-testing supervision.
- The cost savings to the taxpayers from drug testing through decreased jail time and reduced criminal activity.

Important steps a juvenile probation and parole agency can take in improving its drug testing program and make it more cost-effective is to keep detailed statistical data on positive rates and corresponding drug use trends, and redirect its drug testing based on this data. Many probation and parole programs continue to test for specific drugs after they have ceased to be a substance abuse problem in their area.

An agency capable of producing statistically significant program information from an inhouse database will be better able to obtain needed resources for program continuation and growth.

20–2. DRUG TESTING AGENCIES SHOULD USE AN ORGANIZED INFORMATION RETRIEVAL AND REVIEW SYSTEM WHICH COMPLEMENTS A GENERAL RESEARCH CAPABILITY.

Commentary: There are countless advantages to computerized management information systems. An agency should explore management information systems during the program preparation stage. Information produced by electronic systems coupled with a research capacity will greatly strengthen any drug testing program. The interpretations of data that management information systems can provide when program reports are needed might help to support further drug testing operations.

20–3. THE AGENCY LEADERSHIP AND STAFF SHOULD IDENTIFY INFORMATION NEEDS, BASED ON THE AGENCY'S GOALS AND OBJECTIVES, PRIOR TO DEVELOPING A MANAGEMENT INFORMATION SYSTEM.

Commentary: An agency should consider a system capable of delivering standard information: the data needed for management control and for producing reports.

20–4. THE AGENCY DRUG TESTING PROGRAM COORDINATOR SHOULD DIRECT THE DEVELOPMENT OF POLICIES AND PROCEDURES FOR COLLECTING, RECORDING, ORGANIZING, PROCESSING, AND REPORTING DATA COLLECTED FOR INFORMATION MANAGEMENT PURPOSES.

20–5. THE AGENCY SHOULD INDEX ACCURATELY THE DRUGS OF CHOICE USED BY THE JUVENILE POPULATION.

Commentary: The ability to determine the drugs of choice of the juvenile population accurately will assist agency directors in identifying drug trends and administering a more efficient and cost-effective drug testing program.

APPENDIX A: DRUG TESTING CASE LAW

The following appendix is provided as a reference for field professionals who would not necessarily have legal training. It is furnished to illustrate legal principles regarding drug testing and is not intended to be a complete or exhaustive compendium of drug testing case law. This section is not intended to be substitute for legal counsel, therefore if a legal opinion is needed, then you should consult an attorney who is familiar with the law on drug testing.

I. Principles of Law for Leading Drug Testing and Related Cases In Probation and Parole (Arranged by Topics)

1. Testing as a Condition of Probation and Parole

MADDOX V. U.S. PAROLE COMMISSION, 702 F. Supp. 706 (N.D. Ill. 1989) - Modifications by the Parole Commission, adding drug testing as a special condition of parole, were proper, after an officer learned the parolee was using cocaine.

PEOPLE V. SHIMEK, 252 Cal. Rptr. 214 (Cal. Ct. App. 1988) - Court-imposed testing of urine as a condition of probation is proper even if marijuana is the only drug used, as the purpose of the test is to determine if the law has been violated.

STATE V. SMITH, 540 A.2d 679 (Conn. 1988) - Drug testing could be properly imposed on a defendant on probation for armed robbery. Moreover, a search by a probation officer is subject to the less stringent standard of "reasonable suspicion," not "probable cause." This standard requires nothing more than that the officer is able to point to specific and articulate facts that lead to a rational inference that a condition of probation has been violated.

PEOPLE EX REL. JIMINEZ V. WARDEN, 530 N.Y.S.2d 499 (N.Y. Sup. Ct. 1988) - A parole officer's request for the parolee to submit to a urine test did not constitute an illegal search and seizure. A parole officer's request for parolee to submit to urinalysis is substantially related to the officer's duty to determine if the parolee is drug free. The evidence seized as a result of the drug test is admissible in a parole revocation proceeding.

PEOPLE V. ROTH, 397 N.W.2d 196 (Mich. Ct. App. 1986) - Submission to urinalysis testing is a valid condition of probation.

UNITED STATES V. DUFF, 831 F.2d 176 (9th Cir. 1987) - Searches of probationers by officers are held to a less stringent standard than probable cause, one based on "reasonableness," as such submission to urinalysis qualifies, since it is often the least intrusive way of determining if probationers have refrained from drug use. A probation officer may order a probationer to undergo urine testing for illegal drugs even though such testing has not been imposed by the judge as a condition of probation. The probation officer's use of urinalysis is consistent with the condition that the probationer not violate the law. The court, however, stated that it would have been preferable for the probation officer to obtain a court modification of the conditions before performing the test.

UNITED STATES V. WILLIAMS, 787 F.2d 1182 (7th Cir. 1986) - Court-imposed drug testing as a condition of probation in cases where the probationer was not initially charged with a drug offense, but where he has been shown to have a problem of drug abuse of dependency is "reasonably related to the rehabilitation of the individual."

STORMS V. COUGHLIN, 600 F. Supp. 1214 (S.D.N.Y. 1984) - Even in a prison setting, there are limits to what correctional officers can do to obtain a urine sample. The court said: "It is important . . . that the conduct of the search be no more degrading than is reasonably necessary to satisfy the legitimate security interests of the institution. Forcing an inmate to urinate in front of others, male or female, significantly enhances the humiliating nature of the test."

HOWARD V. STATE**,** 308 S.E.2d 424 (Ga. Ct. App. 1983) - Drug testing can be imposed on probationers when residential treatment programs include a non-use rule.

MACIAS V. STATE**,** 649 S.W.2d 150 (Tex. Ct. App. 1983) - The taking of a urine sample is analogous to the taking of a blood sample, each involving an extraction from the human body and as such constitutes a search and seizure imbued with Fourth Amendment protection.

UNITED STATES V. TONRY**,** 605 F.2d 144 (5th Cir. 1979) - Conditions of probation should be "reasonably related" to the (Federal Probation) Act. Consideration of three factors is required to determine whether a reasonable relationship exists: (1) the purpose sought to be served by probation; (2) the extent to which constitutional rights enjoyed by law-abiding citizens should be accorded to probationers; and (3) the legitimate needs of law enforcement.

STATE V. ROBLEDO**,** 569 P.2d 288 (Ariz. Ct. App. 1977) - Results of urine tests may be used in revocation proceedings when abstinence from illegal drugs is a condition of probation.

LATTA V. FITZHARRIS**,** 521 F.2d 246 (9th Cir.), *cert denied*, 423 U.S. 897 (1975) - A search based on a "hunch" by a parole officer is not unreasonable.

EWING V. STATE**,** 310 N.E.2d 571 (Ind. Ct. App. 1974) - Drug testing is a valid means of enforcing non-use conditions of probation where the underlying conviction is for a drug offense.

SCHMERBER V. CALIFORNIA**,** 384 U.S. 757 (1966) The removal of blood from a suspect without his or her consent to obtain evidence is not a violation of any constitutional rights as long as the removal is done by medical personnel using accepted medical methods.

2. Informing Offenders

CLAY V. STATE**,** 710 S.W.2d 119 (Tex. Ct. App. 1986) - Failure to submit to urine tests can be negatively construed in probation revocation cases.

PEOPLE V. HOLZHAUER**,** 494 N.E.2d 272 (Ill. App. Ct. 1986) - Failure to submit to breathalyzer test upon request of proper officials justifies revocation of probation.

3. Reliability and Accuracy

ARGUIJO V. STATE**,** 764 S.W.2d 919 (Tex. Ct. App. 1989) - Preponderance of the evidence necessary in revocation proceedings is met when samples test positive for metabolites which an expert testifies indicates prior use of the drug.

BROWN V. STATE**,** 760 S.W.2d 748 (Tex. Ct. App. 1988) - Where an initial screen and an alternative procedure show presence of cannabinoids, and an expert testifies that the necessary quantity present to obtain positive results could not have been due to passive inhalation, "preponderance of evidence" is met in showing that the probationer exercised care, control and management over the substance in usable quantity.

CHANEY V. SOUTHERN RAILWAY CO.**,** 847 F.2d 718 (11th Cir. 1988) - The Eleventh Circuit Court of Appeals remanded a case to the trial court for consideration of employee's claim that the EMIT™ test produces false positive results for blacks and hence is unreliable. Whether or not the EMIT™ test results in fact produce false positives for blacks is still an unsettled legal issue.

MOORE V. COM., PA. BD. OF PROBATION & PAROLE**,** 505 A.2d 1366 (Pa. Commw. Ct. 1986) - A claim that samples are inaccurate due to the ingestion of medication for illness was not accepted when traces of three drugs (amphetamine, methamphetamine, and tetrahydrocannabinol) were found in the probationer's body.

WILSON V. STATE**,** 697 S.W.2d 83 (Tex. Ct. App. 1985) - The burden of proof is on the one who offers the test result to establish the scientific acceptance of its equipment and results. Unless this is done, the evidence is not admissible.

ISAACKS V. STATE**,** 646 S.W.2d 602 (Tex. Ct. App. 1983) - Testimony from an operator who knew nothing of the scientific theory enabling the machine to detect a controlled substance could not overcome the absence of general acceptance of drug tests and tests of reliability and accuracy.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983) - Trial courts may make a determination of the admissibility of test results on the basis of testimony, exhibits, treatises or the rationale of cases in other jurisdictions, rather than calculating the consensus of the scientific community. In this case, a revocation based on a single EMIT™ administered to probationers at random was upheld.

FRYE V. UNITED STATES, 293 F. 1013 (D.C. Cir. 1923) - Before the results of scientific tests will be admissible as evidence in a trial, the procedures used should be sufficiently established to have gained general acceptance in the particular field to which they belong. The court said: "[w]hile courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field to which it belongs."

4. Confirmation of Positive Results

STATE V. QUELNAN, 767 P.2d 243 (Hawaii 1989) - When a timely request is made by defense counsel for the production of an existing sample for an independent test, the request should be honored.

PELLA V. ADAMS, 702 F. Supp. 244 (D. Nev. 1988) The court held that double EMIT™ testing satisfied due process requirements in prison disciplinary cases.

IN RE JOHNSTON, 745 P.2d 864 (Wash. 1987) - Single positive urinalysis test results meet the "some evidence" criteria in prison disciplinary proceedings where revocation of good time and mandatory segregation may be the result.

LAHEY V. KELLY, 518 N.E.2d 924 (N.Y. 1987) - Results of an EMIT™ test confirmed by a second EMIT™ test constitutes "substantial evidence" to support a determination that inmates have violated institutional rules prohibiting the use of controlled substances.

STATE V. JOHNSON, 527 A.2d 250 (Conn. App. Ct. 1987) - A double EMIT™ test was considered sufficient proof of drug use to support revocation, even though the defendant's expert testified that the EMIT™ test results error rate was 5 to 10%.

PEOPLE V. WALKER, 517 N.E.2d 679 (Ill. App. Ct. 1987) - Double EMIT™ test results showing positive results on same sample are sufficiently reliable to support revocation.

SPENCE V. FARRIER, 807 F.2d 753 (8th Cir. 1986) - Double EMIT™ tests provide "some evidence" necessary to support prison disciplinary board's decision.

VASQUEZ V. COUGHLIN, 499 N.Y.S.2d 461 (N.Y. App. Div. 1986) - Positive results from two EMIT™ tests performed on the same sample were held by the court as sufficient to establish guilt in a prison disciplinary hearing.

BROWN V. SMITH, 505 N.Y.S.2d 743 (N.Y. Sup. Ct. 1985) - In prison disciplinary proceedings, a second EMIT™ test given by different test operators was not considered sufficiently reliable as confirmation where operators could only reproduce their results 37.5% of the time.

HIGGS V. BLAND, 888 F.2d 443 (6th Cir. 1989) - A positive EMIT™ test result is sufficient evidence to satisfy due process requirements in a prison disciplinary proceeding.

PERANZO V. COUGHLIN, 850 F.2d 125 (2d Cir. 1988) - Double EMIT™ test results, screening and confirmation, upheld in prison disciplinary proceedings.

SUPERINTENDENT V. HILL, 472 U.S. 445 (1985) - The United States Supreme Court held that disciplinary action against an inmate resulting in solitary confinement or loss of good time credit may be sustained if the decision is supported by "some evidence."

WYKOFF V. RESIG, 613 F. Supp. 1504 (N.D. Ind. 1985) - The unconfirmed single EMIT™ test result was held not sufficient as a basis for action in a work release disciplinary hearing, but a positive result from a second EMIT™ test constituted sufficient evidence.

JENSEN V. LICK, 589 F. Supp. 35 (D.N.D. 1984) - Single EMIT™ test results were upheld as sufficient in prison disciplinary proceedings. The court noted that the Center for Disease Control in Atlanta found EMIT™ test results to be from 97–99 percent accurate, and concluded that it was sufficient to apply to prison disciplinary cases.

STORMS V. COUGHLIN, 600 F. Supp. 1214 (S.D.N.Y. 1984) - Inmate's evidence concerning the lack of reliability of double EMIT™ testing of the same sample raised an issue of substance sufficient to withstand a motion to dismiss.

PEOPLE V. MOORE, 666 P.2d 419 (Cal. 1983) - The government should employ "rigorous and systematic" procedures to preserve samples. In this case samples were preserved for 90 days, or longer if a request was made, but the government failed to show that such requests were routinely made and honored.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983) - Revocation based on single EMIT™ test administered to probationers at random was upheld.

STATE V. RIVERA, 569 P.2d 1347 (Ariz. 1977) - A one-time urine drug test along with admission that probationer had used drugs is sufficient to uphold revocation.

5. Chain of Custody of Specimen

McDONALD V. STATE, 550 A.2d 696 (Md. 1988) - It is the affirmative duty of the State to establish chain of custody procedures to show that the urine tested is in fact the urine of the probationer being revoked.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - Inadequate chain of custody procedures become irrelevant if the probationer confesses to using drugs.

STAHL V. COM., PA. BD. OF PROBATION & PAROLE, 525 A.2d 1272 (Pa. Commw. Ct. 1987) - A showing that samples were labelled by an officer and placed in a refrigerator until mailing them to the laboratory amounted to sufficient custodial procedure to establish a chain of custody.

6. Court Testimony and Laboratory Reports

LAWSON V. COM., DEPT. OF CORRECTIONS, 539 A.2d 69 (Pa. Commw. Ct. 1988) - The court rejected a pre-parolee's claim that the revocation procedure denied him due process of law in that he was deprived of the right to confrontation and cross-examination by the introduction of a laboratory report into evidence. The court found it "clear" that no one has a constitutional right to either participate in a pre-release program, or to the confrontation and cross-examination of witnesses in prison disciplinary proceedings, and that therefore no constitutional right was violated.

WARD V. COM., PA. BD. OF PROBATION & PAROLE, 538 A.2d 971 (Pa. Commw. Ct. 1988) - Parole was revoked based on parole agent's testimony and two laboratory reports to the effect that parolees used controlled substances. The court held that although the parole agent's testimony constituted hearsay, the evidence was admissible as an exception to the hearsay rule. As for laboratory reports, the court held them admissible under a good cause exception if they bear sufficient "indicia of reliability." The laboratory report was held reliable here because it contained the laboratory letterhead and was signed by the laboratory's pathologist director, satisfying the "indicia of reliability" test set in *Powell v. Com., Pa. Bd. of Probation & Parole* 513 A.2d 1139 (Pa. Commw. Ct. 1986).

DAMRON V. COM., PA. BD. OF PROBATION & PAROLE, 531 A.2d 592 (Pa. Commw. Ct. 1987) - A laboratory urinalysis report which contains the laboratory letterhead and pathologist director's signature bears sufficient "indicia of reliability" to be accepted under the business record exception to the hearsay rule.

COMMONWEALTH V. JORASKIE, 519 A.2d 1010 (Pa. Super. Ct. 1987) - Unproved urinalysis report suggesting presence of cannabinoids in parolee's urine was inadmissible as a business record exception to the hearsay rule and, therefore, could not provide the basis for revocation of parole.

WILSON V. STATE, 521 A.2d 1257 (Md. Ct. Spec. App. 1987) - Unidentified laboratory reports purportedly indicating that a probationer has used marijuana are not sufficiently reliable to justify revocation.

JONES V. COM., PA. BD. OF PROBATION & PAROLE, 520 A.2d 1258 (Pa. Commw. Ct. 1987) - Laboratory reports not containing any "indicia of regularity and reliability" on their face are not admissible over parolees' hearsay objections.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - A confession of drug use by a probationer is sufficient evidence for revocation even without a laboratory analysis of his urine sample.

JEFFERSON V. COM., PA. BD. OF PROBATION & PAROLE, 506 A.2d 495 (Pa. Commw. Ct. 1986) - Laboratory reports are properly admissible hearsay evidence in revocation hearings without allowing confrontation and cross-examination subject to a finding of "good cause" to deny a parolee this right.

POWELL V. COM., PA. BD. OF PROBATION & PAROLE, 513 A.2d 1139 (Pa. Commw. Ct. 1986) - To admit a laboratory drug screen report without witness confrontation, the report has to contain "indicia of regularity and reliability."

UNITED STATES V. BELL, 785 F.2d 640 (8th Cir. 1986) - Where a probationer presents no evidence to contradict his drug usage, a report which bears "substantial indicia of reliability" is admissible without allowing confrontation and cross-examination of those preparing the reports.

WHITMORE V. COM., PA. BD. OF PROBATION & PAROLE, 504 A.2d 401 (Pa. Commw. Ct. 1986) - Hospital urinalysis reports were not admissible as a business record exemption to the hearsay rule, as no custodian or qualified witness testified in support of the record.

UNITED STATES V. PENN, 721 F.2d 762 (11th Cir. 1983) - A laboratory urinalysis report accompanied by a letter from the laboratory president is "trustworthy and reliable."

7. Confidentiality

No court cases have yet been decided on confidentiality of urine test results. Disclosure or nondisclosure is governed by State law or agency policy.

II. Principles of Law for Leading Drug Testing and Related Cases In Probation and Parole (Arranged by Constitutional Issues)

1. Right Against Unreasonable Search and Seizure

STATE V. SMITH, 540 A.2d 679 (Conn. 1988) - Drug testing could be properly imposed on a defendant on probation for armed robbery. Moreover, a search by a probation officer is subject to the less stringent standard of "reasonable suspicion," not "probable cause." This standard requires nothing more than that the officer is able to point to specific and articulate facts that lead to a rational inference that a condition of probation has been violated.

PEOPLE EX REL. JIMINEZ V. WARDEN, 530 N.Y.S.2d 499 (N.Y. Sup. Ct. 1988) - A parole officer's request for the parolee to submit to a urine test did not constitute an illegal search and seizure. A parole officer's request for parolee to submit to urinalysis is substantially related to the officers duty to determine if the parolee is drug free. The evidence seized as a result of the drug test is admissible in a parole revocation proceeding.

UNITED STATES V. DUFF, 831 F.2d 176 (9th Cir. 1987) - Searches of probationers by officers are held to a less stringent standard than probable cause, one based on "reasonableness," and submission to urinalysis qualifies, since it is often the least intrusive way of determining if probationers have refrained from drug use. A probation officer may order a probationer to undergo urine testing for illegal drugs even though such testing has not been imposed by the judge as a condition of probation. The probation officer's use of urinalysis is consistent with the condition that the probationer not violate the law. The court, however, stated that it would have been preferable for the probation officer to obtain a court modification of the conditions before performing the test.

STORMS V. COUGHLIN, 600 F. Supp. 1214 (S.D.N.Y. 1984) - Even in a prison setting, there are limits to what correctional officers can do to obtain a urine sample. The court said: "It is important . . . that the conduct of the search be no more degrading than is reasonably necessary to satisfy the legitimate security interests of the institution. Forcing an inmate to urinate in front of others, male or female, significantly enhances the humiliating nature of the test."

MACIAS V. STATE, 649 S.W.2d 150 (Tex. Ct. App. 1983) - The taking of a urine sample is analogous to the taking of a blood sample, each involving an extraction from the human body and as such constitutes a search and seizure imbued with Fourth Amendment protection.

LATTA V. FITZHARRIS, 521 F.2d 246 (9th Cir.), *cert denied,* 423 U.S. 897 (1975) - A search based on a "hunch" by a parole officer is not unreasonable.

SCHMERBER V. CALIFORNIA, 384 U.S. 757 (1966) The removal of blood from a suspect without his or her consent to obtain evidence is not a violation of any constitutional rights as long as the removal is done by medical personnel using accepted medical methods.

2. Right to Due Process

Test Accuracy and Reliability

ARGUIJO V. STATE, 764 S.W.2d 919 (Tex. Ct. App. 1989) - Preponderance of the evidence necessary in revocation proceedings is met when samples test positive for metabolites which an expert testifies indicates prior use of the drug.

BROWN V. STATE, 760 S.W.2d 748 (Tex. Ct. App. 1988) - Where an initial screen and an alternative procedure show presence of cannabinoids, and an expert testifies that the necessary quantity present to obtain positive results could not have been due to passive inhalation, "preponderance of evidence" is met in showing that the probationer exercised care, control and management over the substance in usable quantity.

CHANEY V. SOUTHERN RAILWAY CO., 847 F.2d 718 (11th Cir. 1988) - The Eleventh Circuit Court of Appeals remanded a case to the trial court for consideration of employee's claim that the EMIT™ test produces false positive results for blacks and hence is unreliable. Whether or not the EMIT™ test results in fact produce false positives for blacks is still an unsettled legal issue.

MOORE V. COM., PA. BD. OF PROBATION & PAROLE, 505 A.2d 1366 (Pa. Commw. Ct. 1986) - A claim that samples are inaccurate due to the ingestion of medication for illness was not accepted when traces of three drugs (amphetamine, methamphetamine, and tetrahydrocannabinol) were found in the probationer's body.

WILSON V. STATE, 697 S.W.2d 83 (Tex. Ct. App. 1985) - The burden of proof is on the one who offers the test result to establish the scientific acceptance of its equipment and results. Unless this is done, the evidence is not admissible.

ISAACKS V. STATE, 646 S.W.2d 602 (Tex. Ct. App. 1983) - Testimony from an operator who knew nothing of the scientific theory enabling the machine to detect a controlled substance could not overcome the absence of general acceptance of drug tests and tests of reliability and accuracy.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983) - Trial courts may make a determination of the admissibility of test results on the basis of testimony, exhibits, treatises or the rationale of cases in other jurisdictions, rather than calculating the consensus of the scientific community. In this case, a revocation based on a single EMIT™ administered to probationers at random was upheld.

CURTIS V. STATE, 548 S.W.2d 57 (Tex. Crim. App. 1977) - Preponderance of evidence is not met when a screening test shows positive for heroin, when the record showed that 25 other substances could result in false positive findings.

FRYE V. UNITED STATES, 293 F. 1013 (D.C. Cir. 1923) - Before the results of scientific tests will be admissible as evidence in a trial, the procedures used should be sufficiently established to have gained general acceptance in the particular field to which they belong. The court said: "[w]hile courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field to which it belongs."

Confirmation of positive test results

PELLA V. ADAMS, 702 F. Supp. 244 (D. Nev. 1988) The court held that double EMIT™ testing satisfied due process requirements in prison disciplinary cases.

IN RE JOHNSTON, 745 P.2d 864 (Wash. 1987) - Single positive urinalysis test results meet the "some evidence" criteria in prison disciplinary proceedings where revocation of good time and mandatory segregation may be the result.

LAHEY V. KELLY, 518 N.E.2d 924 (N.Y. 1987) - Results of an EMIT™ test confirmed by a second EMIT™ test constitutes "substantial evidence" to support a determination that inmates have violated institutional rules prohibiting the use of controlled substances.

***STATE V. JOHNSON*,** 527 A.2d 250 (Conn. App. Ct. 1987) - A double EMIT™ test was considered sufficient proof of drug use to support revocation, even though the defendant's expert testified that the EMIT™ test results error rate was 5 to 10%.

***PEOPLE V. WALKER*,** 517 N.E.2d 679 (Ill. App. Ct. 1987) - Double EMIT™ tests showing positive results on the same sample are sufficiently reliable to support revocation.

***SPENCE V. FARRIER*,** 807 F.2d 753 (8th Cir. 1986) - Double EMIT™ tests provide "some evidence" necessary to support prison disciplinary board's decision.

***VASQUEZ V. COUGHLIN*,** 499 N.Y.S.2d 461 (N.Y. App. Div. 1986) - Positive results from two EMIT™ tests performed on the same sample were held by the court as sufficient to establish guilt in a prison disciplinary hearing.

***BROWN V. SMITH*,** 505 N.Y.S.2d 743 (N.Y. Sup. Ct. 1985) - In prison disciplinary proceedings, a second EMIT™ test given by different test operators was not considered sufficiently reliable as confirmation where operators could only reproduce their results 37.5% of the time.

***HIGGS V. BLAND*,** 888 F.2d 443 (6th Cir. 1989) - A positive EMIT™ test result is sufficient evidence to satisfy due process requirements in a prison disciplinary proceeding.

***PERANZO V. COUGHLIN*,** 850 F.2d 125 (2d Cir. 1988) - Double EMIT™ tests, screening and confirmation, upheld in prison disciplinary proceedings.

SUPERINTENDENT V. HILL, 472 U.S. 445 (1985) - The United States Supreme Court held that disciplinary action against an inmate resulting in solitary confinement or loss of good time credit may be sustained if the decision is supported by "some evidence."

***WYKOFF V. RESIG*,** 613 F. Supp. 1504 (N.D. Ind. 1985) - The unconfirmed single EMIT™ test result was held not sufficient as a basis for action in a work release disciplinary hearing, but a positive result from a second EMIT™ test result constituted sufficient evidence.

***JENSEN V. LICK*,** 589 F. Supp. 35 (D.N.D. 1984) - Single EMIT™ test results were upheld as sufficient in prison disciplinary proceedings. The court noted that the Center for Disease Control in Atlanta found EMIT™ test results to be from 97-99% accurate, and concluded that it was sufficient to apply to prison disciplinary cases.

***STORMS V. COUGHLIN*,** 600 F. Supp. 1214 (S.D.N.Y. 1984) - Inmates evidence concerning the lack of reliability of double EMIT™ testing of the same sample raised an issue of substance sufficient to withstand a motion to dismiss.

***SMITH V. STATE*,** 298 S.E.2d 482 (Ga. 1983) - Revocation based on single EMIT™ test administered to probationers at random was upheld.

***STATE V. RIVERA*,** 569 P.2d 1347 (Ariz. 1977) - A one-time urine drug test along with admission that probationer had used drugs is sufficient to uphold revocation.

Chain of custody of specimen

***McDONALD V. STATE*,** 550 A.2d 696 (Md. 1988) - It is the affirmative duty of the State to establish chain of custody procedures to show that the urine tested is in fact the urine of the probationer being revoked.

***McQUEEN V. STATE*,** 740 P.2d 744 (Okla. Crim. App. 1987) - Inadequate chain of custody procedures become irrelevant if the probationer confesses to using drugs.

***STAHL V. COM., PA. BD. OF PROBATION & PAROLE*,** 525 A.2d 1272 (Pa. Commw. Ct. 1987) - A showing that samples were labelled by an officer and placed in a refrigerator until mailing them to the laboratory amounted to sufficient custodial procedure to establish a chain of custody.

Preservation of specimen

***STATE V. QUELNAN*,** 767 P.2d 243 (Hawaii 1989) - When a timely request is made by defense counsel for the production of an existing sample for an independent test, the request should be honored.

PEOPLE V. MOORE, 666 P.2d 419 (Cal. 1983) - The government must employ "rigorous and systematic" procedures to preserve samples. In this case samples were preserved for 90 days, or longer if a request was made, but the government failed to show that such requests were routinely made and honored.

3. Right to Confrontation and Cross-Examination

LAWSON V. COM., DEPT. OF CORRECTIONS, 539 A.2d 69 (Pa. Commw. Ct. 1988) - The court rejected a pre-parolee's claim that the revocation procedure denied him due process of law in that he was deprived of the right to confrontation and cross-examination by the introduction of a laboratory report into evidence. The court found it "clear" that no one has a constitutional right to either participate in a pre-release program, or to the confrontation and cross-examination of witnesses in prison disciplinary proceedings, and that therefore no constitutional right was violated.

WARD V. COM., PA. BD. OF PROBATION & PAROLE, 538 A.2d 971 (Pa. Commw. Ct. 1988) - Parole was revoked based on parole agent's testimony and two laboratory reports to the effect that parolees used controlled substances. The court held that although the parole agent's testimony constituted hearsay, the evidence was admissible as an exception to the hearsay rule. As for laboratory reports, the court held them admissible under a good cause exception if they bear sufficient "indicia of reliability." The laboratory report was held reliable here because it contained the laboratory letterhead and was signed by the laboratory's pathologist director, satisfying the "indicia of reliability" test set in *Powell v. Com.*, 513 A.2d 1139 (1986).

DAMRON V. COM., PA. BD. OF PROBATION & PAROLE, 531 A.2d 592 (Pa. Commw. Ct. 1987) - A laboratory urinalysis report which contains the laboratory letterhead and pathologist director's signature bears sufficient "indicia of reliability" to be accepted under the business record exception to the hearsay rule.

COMMONWEALTH V. JORASKIE, 519 A.2d 1010 (Pa. Super. Ct. 1987) - Unproved urinalysis report suggesting presence of cannabinoids in parolee's urine was inadmissible as a business record exception to the hearsay rule and, therefore, could not provide the basis for revocation of parole.

JONES V. COM., PA. BD. OF PROBATION AND PAROLE, 520 A.2d 1258 (Pa. Commw. Ct. 1987) - Laboratory reports not containing any "indicia of regularity and reliability" on their face are not admissible over parolees' hearsay objections.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - A confession of drug use by a probationer is sufficient evidence for revocation even without a laboratory analysis of his urine sample.

WILSON V. STATE, 521 A.2d 1257 (Md. Ct. Spec. App. 1987) - Unidentified laboratory reports purportedly indicating that a probationer has used marijuana is not sufficiently reliable to justify revocation.

JEFFERSON V. COM., PA. BD. OF PROBATION & PAROLE, 506 A.2d 495 (Pa. Commw. Ct. 1986) - Laboratory reports are properly admissible hearsay evidence in revocation hearings without allowing confrontation and cross-examination subject to a finding of "good cause" to deny a parolee this right.

POWELL V. COM., PA. BD. OF PROBATION & PAROLE, 513 A.2d 1139 (Pa. Commw. Ct. 1986) - To admit a laboratory drug screen report without witness confrontation, the report has to contain "indicia of regularity and reliability."

UNITED STATES V. BELL, 785 F.2d 640 (8th Cir. 1986) - Where a probationer presents no evidence to contradict his or her drug usage, a report which bears "substantial indicia of reliability" is admissible without allowing confrontation and cross-examination of those preparing the reports.

WHITMORE V. COM., PA. BD. OF PROBATION & PAROLE, 504 A.2d 401 (Pa. Commw. Ct. 1986) - Hospital urinalysis reports were not admissible as a business record exemption to the hearsay rule as no custodian or qualified witness testified in support of the record.

UNITED STATES V. PENN, 721 F.2d 762 (11th Cir. 1983) - A laboratory urinalysis report accompanied by a letter from the laboratory president is "trustworthy and reliable."

4. Right Against Self-Incrimination

CLAY V. STATE, 710 S.W.2d 119 (Tex. Ct. App. 1986) - Failure to submit to urine tests can be negatively construed in probation revocation cases.

PEOPLE V. HOLZHAUER, 494 N.E.2d 272 (Ill. App. Ct. 1986) - Failure to submit to breathalyzer test upon request of proper officials justifies revocation of probation.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - Inadequate chain of custody procedures become irrelevant if the probationer confesses to using drugs.

III. Principles of Law for Leading Drug Testing and Related Cases In Probation and Parole (Arranged in Alphabetical Order)

ADKINS V. MARTIN, 699 F. Supp. 1510 (W.D. Okla. 1988) - The utilization of two separate and independent tests, each having a different scientifically accepted methodology, satisfies the requirements of due process.

ARGUIJO V. STATE, 764 S.W.2d 919 (Tex. Ct. App. 1989) - Preponderance of the evidence necessary in revocation proceedings is met when samples test positive for metabolites which an expert testifies indicates prior use of the drug.

BROWN V. SMITH, 505 N.Y.S.2d 743 (N.Y. Sup. Ct. 1985) - In prison disciplinary proceedings, a second EMIT™ test given by different test operators was not considered sufficiently reliable as confirmation where operators could only reproduce their results 37.5% of the time.

BROWN V. STATE, 760 S.W.2d 748 (Tex. Ct. App. 1988) - Where an initial screen and an alternative procedure show presence of cannabinoids, and an expert testifies that the necessary quantity present to obtain positive results could not have been due to passive inhalation, "preponderance of evidence" is met in showing that the probationer exercised care, control and management over the substance in usable quantity.

CHANEY V. SOUTHERN RAILWAY CO., 847 F.2d 718 (11th Cir. 1988) - The Eleventh Circuit Court of Appeals remanded a case to the trial court for consideration of employee's claim that the EMIT™ test produces false positive results for blacks, hence is unreliable. Whether or not the EMIT™ test results in fact produce false positives for blacks is still an unsettled legal issue.

CLAY V. STATE, 710 S.W.2d 119 (Tex. Ct. App. 1986) - Failure to submit to urine tests can be negatively construed in probation revocation cases.

COMMONWEALTH V. JORASKIE, 519 A.2d 1010 (Pa. Super. Ct. 1987) - Unproved urinalysis report suggesting presence of cannabinoids in parolee's urine was inadmissible as a business record exception to the hearsay rule and, therefore, could not provide the basis for revocation of parole.

DAMRON V. COM., PA. BD. OF PROBATION & PAROLE, 531 A.2d 592 (Pa. Commw. Ct. 1987) - A laboratory urinalysis report which contains the laboratory letterhead and pathologist director's signature bears sufficient "indicia of reliability" to be accepted under the business record exception to the hearsay rule.

EWING V. STATE, 310 N.E.2d 571 (Ind. Ct. App. 1974) - Drug testing is a valid means of enforcing non-use conditions of probation where the underlying conviction is for a drug offense.

FRYE V. UNITED STATES, 293 F. 1013 (D.C. Cir. 1923) - Before the results of scientific tests will be admissible as evidence in a trial, the procedures used must be sufficiently established to have gained general acceptance in the particular field to which they belong. The court said: "[w]hile courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field to which it belongs."

HIGGS V. BLAND, 888 F.2d 443 (6th Cir. 1989) - A positive EMIT™ test result is sufficient evidence to satisfy due process requirements in a prison disciplinary proceeding.

HOWARD V. STATE, 308 S.E.2d 424 (Ga. Ct. App. 1983) - Drug testing can be imposed on probationers when residential treatment programs include a non-use rule.

IN RE JOHNSTON, 745 P.2d 864 (Wash. 1987) - Single positive urinalysis test results meet the "some evidence" criteria in prison disciplinary proceedings where revocation of good time and mandatory segregation may be the result.

ISAACKS V. STATE, 646 S.W.2d 602 (Tex. Ct. App. 1983) - Testimony from an operator who knew nothing of the scientific theory enabling the machine to detect a controlled substance could not overcome the absence of general acceptance of drug tests and tests of reliability and accuracy.

JEFFERSON V. COM., PA. BD. OF PROBATION & PAROLE, 506 A.2d 495 (Pa. Commw. Ct. 1986) - Laboratory reports are properly admissible hearsay evidence in revocation hearings without allowing confrontation and cross-examination subject to a finding of "good cause" to deny a parolee this right.

JENSEN V. LICK, 589 F. Supp. 35 (D.N.D. 1984) - Single EMIT™ test results were upheld as sufficient in prison disciplinary proceedings. The court noted that the Center for Disease Control in Atlanta found EMIT™ test results to be from 97–99 percent accurate, and concluded that it was sufficient to apply to prison disciplinary cases.

JONES V. COM., PA. BD. OF PROBATION & PAROLE, 520 A.2d 1258 (Pa. Commw. Ct. 1987) - Laboratory reports not containing any "indicia of regularity and reliability" on their face are not admissible over parolees' hearsay objections.

JONES V. UNITED STATES, 548 A.2d 35 (D.C. 1988) - Although the record in the present case did not include sufficient testimony on the general acceptance of the EMIT™ test in the scientific community, the court took judicial notice of another trial court decision in the same jurisdiction and of the opinions of the courts in other jurisdictions and held that EMIT™ test results are presumptively reliable and admissible into evidence; and the agency's record reporting the test results falls within the business exception to the hearsay rule because it contains objective facts rather than expressions of opinion and bares sufficient indicia of reliability.

LAHEY V. KELLY, 518 N.E.2d 924 (N.Y. 1987) - Results of an EMIT™ test results confirmed by a second EMIT™ test constitute "substantial evidence" to support a determination that inmates have violated institutional rules prohibiting the use of controlled substances.

LATTA V. FITZHARRIS, 521 F.2d 246 (9th Cir.), *cert denied*, 423 U.S. 897 (1975) - A search based on a "hunch" by a parole officer is not unreasonable.

LAWSON V. COM., DEPT. OF CORRECTIONS, 539 A.2d 69 (Pa. Commw. Ct. 1988) - The court rejected a pre-parolee's claim that the revocation procedure denied him due process of law in that he was deprived of the right to confrontation and cross-examination by the introduction of a laboratory report into evidence. The court found it "clear" that no one has a constitutional right to either participate in a pre-release program, or to the confrontation and cross-examination of witnesses in prison disciplinary proceedings, and that therefore no constitutional right was violated.

McDONALD V. STATE, 550 A.2d 696 (Md. 1988) - It is the affirmative duty of the State to establish chain of custody procedures to show that the urine tested is in fact the urine of the probationer being revoked.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987) - Inadequate chain of custody procedures become irrelevant if the probationer confesses to using drugs.

MACIAS V. STATE, 649 S.W.2d 150 (Tex. Ct. App. 1983) - The taking of a urine sample is analogous to the taking of a blood sample, each involving an extraction from the human body and as such constitutes a search and seizure imbued with Fourth Amendment protection.

MADDOX V. U.S. PAROLE COMMISSION, 702 F. Supp. 706 (N.D. Ill. 1989) - Modifications by the Parole Commission, adding drug testing as a special condition of parole, were proper, after an officer learned the parolee was using cocaine.

MOORE V. COM., PA. BD. OF PROBATION & PAROLE, 505 A.2d 1366 (Pa. Commw. Ct. 1986) - A claim that samples are inaccurate due to the ingestion of medication for illness was not accepted when traces of three drugs (amphetamine, methamphetamine, and tetrahydrocannabinol) were found in the probationer's body.

NEAL V. COM., PA. BD. OF PROBATION AND PAROLE, 531 A.2d 119 (Pa. Commw. Ct. 1987) - Due process does not require that laboratory personnel be produced at the hearing for firsthand authentication where the hearing officer has found good cause for not doing so. There is, however, a need for some indicia of reliability in the form of a responsible person's signature certifying the identity of the report's subject and the correctness of the report.

PELLA V. ADAMS, 702 F. Supp. 244 (D. Nev. 1988) The court held that double EMIT™ testing satisfied due process requirements in prison disciplinary cases.

PEOPLE EX REL. JIMINEZ V. WARDEN, 530 N.Y.S.2d 499 (N.Y. Sup. Ct. 1988) - A parole officer's request for the parolee to submit to a urine test did not constitute an illegal search and seizure. A parole officer's request for parolee to submit to urinalysis is substantially related to the officer's duty to determine if the parolee is drug free. The evidence seized as a result of the drug test is admissible in a parole revocation proceeding.

PEOPLE V. HOLZHAUER, 494 N.E.2d 272 (Ill. App. Ct. 1986) - Failure to submit to breathalyzer test upon request of proper officials justifies revocation of probation.

PEOPLE V. MOORE, 666 P.2d 419 (Cal. 1983) - The government must employ "rigorous and systematic" procedures to preserve samples. In this case samples were preserved for 90 days, or longer if a request was made, but the government failed to show that such requests were routinely made and honored.

PEOPLE V. ROTH, 397 N.W.2d 196 (Mich. Ct. App. 1986) - Submission to urinalysis testing is a valid condition of probation.

PEOPLE V. SHIMEK, 252 Cal. Rptr. 214 (Cal. Ct. App. 1988) - Court-imposed testing of urine as a condition of probation is proper even if marijuana is the only drug used, as the purpose of the test is to determine if the law has been violated.

PEOPLE V. WALKER, 517 N.E.2d 679 (Ill. App. Ct. 1987) - Double EMIT™ tests showing positive results on same sample are sufficiently reliable to support revocation.

PERANZO V. COUGHLIN, 850 F.2d 125 (2d Cir. 1988) - Double EMIT™ tests, screening and confirmation, upheld in prison disciplinary proceedings.

POWELL V. COM., PA. BD. OF PROBATION & PAROLE, 513 A.2d 1139 (Pa. Commw. Ct. 1986) - To admit a laboratory drug screen report without witness confrontation, the report has to contain "indicia of regularity and reliability."

SCHMERBER V. CALIFORNIA, 384 U.S. 757 (1966) The removal of blood from a suspect without his or her consent to obtain evidence is not a violation of any constitutional rights as long as the removal is done by medical personnel using accepted medical methods.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983) - Trial courts may make a determination of the admissibility of test results on the basis of testimony, exhibits, treatises or the rationale of cases in other jurisdictions, rather than calculating the consensus of the scientific community. In this case, a revocation based on a single EMIT™ test administered to probationers at random was upheld.

SOTO V. LORD, 693 F. Supp. 8 (S.D.N.Y. 1988) - Assuming that reliance on an unconfirmed EMIT™ test violates due process, prison official is entitled to qualified immunity because the law requiring use of confirmatory test is not clearly established; and prison official is not entitled to qualified immunity for failure to establish a chain of custody because his conduct was unreasonable in relying upon the inaccurate, incomplete checklist.

SPENCE V. FARRIER, 807 F.2d 753 (8th Cir. 1986) - Double EMIT™ tests provide "some evidence" necessary to support prison disciplinary board's decision.

STAHL V. COM., PA. BD. OF PROBATION & PAROLE, 525 A.2d 1272 (Pa. Commw. Ct. 1987) - A showing that samples were labelled by an officer and placed in a refrigerator until mailing them to the laboratory amounted to sufficient custodial procedure to establish a chain of custody.

STATE V. JOHNSON, 527 A.2d 250 (Conn. App. Ct. 1987) - A double EMIT™ test was considered sufficient proof of drug use to support revocation, even though the defendant's expert testified that the EMIT™ test error rate was 5 to 10%.

STATE V. PARRAMORE, 768 P.2d 530 (Wash. Ct. App. 1989) - Condition that defendant who was convicted of selling marijuana submit to urine testing was permissible crime-related prohibition related directly to his conviction.

STATE V. QUELNAN, 767 P.2d 243 (Hawaii 1989) - When a timely request is made by defense counsel for the production of an existing sample for an independent test, the request should be honored.

STATE V. RIVERA, 569 P.2d 1347 (Ariz. 1977) - A one-time urine drug test along with admission that probationer had used drugs is sufficient to uphold revocation.

STATE V. ROBLEDO, 569 P.2d 288 (Ariz. Ct. App. 1977) - Results of urine tests may be used in revocation proceedings when abstinence from illegal drugs is a condition of probation.

STATE V. SIGLER, 769 P.2d 703 (Mont. 1989) - Because defendant had failed several prior drug tests and because the probation offices believed the rehabilitation process could not begin until he was sure defendant was free from drugs, there are reasonable grounds to require that defendant submit to urine testing.

STATE V. SMITH, 540 A.2d 679 (Conn. 1988) - Drug testing could be properly imposed on a defendant on probation for armed robbery. Moreover, a search by a probation officer is subject to the less stringent standard of "reasonable suspicion," not "probable cause." This standard requires nothing more than that the officer is able to point to specific and articulate facts that lead to a rational inference that a condition of probation has been violated.

STORMS V. COUGHLIN, 600 F. Supp. 1214 (S.D.N.Y. 1984) - Even in a prison setting, there are limits to what correctional officers can do to obtain a urine sample. The court said: "It is important . . . that the conduct of the search be no more degrading than is reasonably necessary to satisfy the legitimate security interests of the institution. Forcing an inmate to urinate in front of others, male or female, significantly enhances the humiliating nature of the test." In this case, single EMIT™ test results were upheld in prison disciplinary proceedings.

SUPERINTENDENT V. HILL, 472 U.S. 445 (1985) - The United States Supreme Court held that disciplinary action against an inmate resulting in solitary confinement or loss of good time credit may be sustained if the decision is supported by "some evidence."

UNITED STATES V. BELL, 785 F.2d 640 (8th Cir. 1986) - Where a probationer presents no evidence to contradict his drug usage, a report which bears "substantial indicia of reliability" is admissible without allowing confrontation and cross-examination of those preparing the reports.

UNITED STATES V. BURTON, 866 F.2d 1057 (8th Cir. 1989) - Admission of laboratory reports supported by affidavit from laboratory director bore sufficient indicia of reliability and did not violate probationer's right to confront witnesses; and although lax, the chain of custody of urine samples was adequate because the samples retained identification labels from receipt of samples from probation to their delivery to laboratory and return of reports.

UNITED STATES V. DUFF, 831 F.2d 176 (9th Cir. 1987) - Searches of probationers by officers are held to a less stringent standard than probable cause, one based on "reasonableness," and submission to urinalysis qualifies, since it is often the least intrusive way of determining if probationers have refrained from drug use. A probation officer may order a probationer to undergo urine testing for illegal drugs even though such testing has not been imposed by the judge as a condition of probation. The probation officer's use of urinalysis is consistent with the condition that the probationer not violate the law. The court, however, stated that it would have been preferable for the probation officer to obtain a court modification of the conditions before performing the test.

UNITED STATES V. PENN, 721 F.2d 762 (11th Cir. 1983) - A laboratory urinalysis report accompanied by a letter from the laboratory president is "trustworthy and reliable."

UNITED STATES V. TONRY, 605 F.2d 144 (5th Cir. 1979) - Conditions of probation must be "reasonably related" to the (Federal Probation) Act. Consideration of three factors is required to determine whether a reasonable relationship exists: (1) the purpose sought to be served by probation; (2) the extent to which constitutional rights enjoyed by law-abiding citizens should be accorded to probationers; and (3) the legitimate needs of law enforcement.

UNITED STATES V. WILLIAMS, 787 F.2d 1182 (7th Cir. 1986) - Court imposed drug testing as a condition of probation in cases where the probationer was not initially charged with a drug offense, but where he or she has been shown to have a problem of drug abuse of dependency is "reasonably related to the rehabilitation of the individual."

VASQUEZ V. COUGHLIN, 499 N.Y.S.2d 461 (N.Y. App. Div. 1986) - Positive results from two EMIT™ tests performed on the same sample were held by the court as sufficient to establish guilt in a prison disciplinary hearing.

WARD V. COM., PA. BD. OF PROBATION & PAROLE, 538 A.2d 971 (Pa. Commw. Ct. 1988) - Parole was revoked based on parole agent's testimony and two laboratory reports to the effect that parolees used controlled substances. The court held that although the parole agent's testimony constituted hearsay, the evidence was admissible as an exception to the hearsay rule. As for laboratory reports, the court held them admissible under a good cause exception if they bear sufficient "indicia of reliability." The laboratory report was held reliable here because it contained the laboratory letterhead and was signed by the laboratory's pathologist director, satisfying the "indicia of reliability" test set in *Powell v. Com.*, 513 A.2d 1139 (Pa. Commw. Ct. 1986).

WHITMORE V. COM., PA. BD. OF PROBATION & PAROLE, 504 A.2d 401 (Pa. Commw. Ct. 1986) - Hospital urinalysis reports were not admissible as a business record exemption to the hearsay rule as no custodian or qualified witness testified in support of the record.

WILSON V. STATE, 697 S.W.2d 83 (Tex. Ct. App. 1985) - The burden of proof is on the one who offers the test result to establish the scientific acceptance of its equipment and results. Unless this is done, the evidence is not admissible.

WILSON V. STATE, 521 A.2d 1257 (Md. Ct. Spec. App. 1987) - Unidentified laboratory reports purportedly indicating that a probationer has used marijuana are not sufficiently reliable to justify revocation.

WYKOFF V. RESIG, 613 F. Supp. 1504 (N.D. Ind. 1985) - The unconfirmed single EMIT™ test result was held not sufficient as a basis for action in a work release disciplinary hearing, but a positive result from a second EMIT™ test constituted sufficient evidence.

IV. Drug Testing Case Abstracts: Facts and Holdings by Issue

1. Admissibility of Test Results

UNITED STATES V. BELL, 785 F.2d 640 (8th Cir. 1986)

Facts: At Defendant's probation revocation hearing, laboratory reports indicating positive urine tests were introduced through the probation officer. Defendant argued that his Sixth Amendment right to confront and cross-examine witnesses against him was violated by the introduction of the laboratory reports.

Held: In determining whether "good cause" exists for not allowing confrontation, the court must: (1) assess the government's explanation of why confrontation is undesirable or impractical; and (2) consider the reliability of the evidence which the government offers in place of live testimony. Good cause was present where the laboratory was in California and the revocation hearing was in Arkansas, and the reports were the regular reports of a company whose business it is to conduct such tests.

UNITED STATES V. PENN, 721 F.2d 762 (11th Cir. 1983)

Facts: At Defendant's probation revocation hearing in Alabama, the probation officer testified that Defendant had tested positive for drugs on four separate occasions. The court admitted into evidence the lab reports from a Connecticut laboratory, and a letter from the laboratory summarizing the test results and indicating that at least five different people participated in the analysis of each specimen.

Held: Hearsay statements are admissible in a revocation proceeding where "indicia of reliability" are present and good cause is shown for not allowing confrontation.

STATE V. RIVERA, 569 P.2d 1347 (Ariz. 1977)

Facts: At Defendant's probation revocation hearing, the probation officer testified that Defendant's urine sample had tested positive for morphine use and that Defendant had admitted heroin use. The court admitted the laboratory report showing the positive result into evidence.

Held: The laboratory report is admissible based upon the testimony of the probation officer. The probation officer laid the foundation to show the reliability of the report by testifying about the procedure followed in collecting the sample, sending it to the laboratory, and receiving the report.

JONES V. UNITED STATES, 548 A.2d 35 (D.C. 1988)

Facts: Defendant was convicted of possession of drugs. His urine had tested positive for cocaine the day after his arrest. At trial, a pretrial officer testified that Defendant's urine had tested positive, and about the pretrial agency's drug testing procedures, the test itself, and his knowledge of the general accuracy of the test results. On appeal, Defendant argued that evidence of the drug test should have been excluded because the EMIT™ test was not proved generally accepted in the scientific community and because he could not adequately confront the drug test evidence because the pretrial officer lacked the necessary scientific expertise.

Held: (1) Although the record in the present case did not include sufficient testimony on the general acceptance of the EMIT™ test in the scientific community, the court took judicial notice of another trial court decision in the same jurisdiction and of the opinions of courts in other jurisdictions and held that EMIT™ test results are presumptively reliable and admissible into evidence; (2) the agency's record reporting the test result falls within the business exception to the hearsay rule because it contains objective facts rather than expressions of opinion and bears sufficient indicia of reliability.

STATE V. QUELNAN, 767 P.2d 243 (Hawaii 1989)

Facts: Probationer's January 26, 1988, and February 11, 1988, urine samples tested positive for drugs. On April 4, 1988, defense counsel requested the urine samples for the purpose of conducting independent testing of the specimens. The samples at that time were in the possession of an independent testing laboratory which retained positive samples for six months. The probation office responded to defense counsel's request by stating that the samples had not been saved. After probation had been revoked, defense counsel learned that the samples had been preserved by the laboratory.

Held: (1) Upon defense counsel's timely request for production, the State should have produced the urine samples in order to give probationer the opportunity to conduct independent testing; (2) Admission of probationer's positive urinalysis results into evidence solely through probation officer's testimony violated probationer's right of confrontation.

McDONALD V. STATE, 550 A.2d 696 (Md. 1988)

Facts: (1) At Defendant's probation revocation hearing, two laboratory reports indicating positive urine tests were introduced without requiring the State to produce the technicians who performed the tests. The laboratory department head testified as to normal procedures, but he did not perform tests on the samples in question nor did he have specific knowledge of how the samples were processed; (2) there was no testimony as to how the urine samples were obtained, labeled, and stored, or how they were delivered to the laboratory.

Held: (1) State statute provided for the admission of laboratory reports into evidence and permits confrontation of the chemists who conducted the tests; (2) the State failed to establish with the requisite degree of certainty that the urine tested was in fact the urine of defendant.

WILSON V. STATE, 521 A.2d 1257 (Md. Ct. Spec. App. 1987)

Facts: Probationer's urine sample indicated marijuana use. At the revocation hearing, the court made a finding that it would be cost prohibitive to call a representative of the out-of-State laboratory to testify, and admitted the laboratory report into evidence. The probation officers who testified did not know what kind of urine test was administered nor the effect of probationer's twice-a-day insulin shots on the test results. Probationer argued on appeal that the report was hearsay, that he was denied the right to confront adverse witnesses, and that because there was no evidence of what test was used, reliability was assumed, not proven.

Held: Where no evidence of testing procedure was introduced, and no evidence was presented by the State as to effects of insulin shots, and there was no corroborating evidence, the unidentified laboratory report was not sufficiently reliable to justify revocation of probation.

COMMONWEALTH V. JORASKIE, 519 A.2d 1010 (Pa. Super. Ct. 1987)

Facts: In a parole revocation hearing, Defendant's parole officer testified to obtaining a sample of Defendant's urine and then produced a urinalysis report prepared by a laboratory, showing the presence of cannabinoids. The person preparing the report did not appear in person or by deposition. Defendant argued that the laboratory report was hearsay evidence and its admission into evidence violated his rights of confrontation and cross-examination.

Held: In the absence of good cause sufficient to abridge a defendant's rights of confrontation and cross-examination, an order revoking parole may not rest solely on inadmissible hearsay evidence. In the absence of good cause, the presence of the person making the urinalysis and preparing the report was essential.

WARD V. COM., PA. BD. OF PROBATION & PAROLE, 538 A.2d 971 (Pa. Commw. Ct. 1988)

Facts: Parolee challenged on hearsay grounds the admissibility of laboratory reports indicating positive urine tests.

Held: Laboratory reports containing the laboratory letterhead, signed by a doctor, and stamped with the types of drugs found, have sufficient indicia of reliability to support the finding of good cause for not allowing confrontation.

DAMRON V. COM., PA. BD. OF PROBATION & PAROLE, 531 A.2d 592 (Pa. Commw. Ct. 1987)

Facts: Defendant was found to have violated a condition of his parole to refrain from unlawful possession, use or sale of controlled substances. At the parole revocation hearing, the examiner stated that there was good cause to admit urinalysis reports from a Virginia laboratory into evidence without testimony from anyone from the laboratory as to accuracy and reliability because the persons with such knowledge were beyond the subpoena powers of the Pennsylvania parole board. Defendant argued that the revocation of parole was not based on substantial evidence because the parole board relied upon inadmissible hearsay.

Held: (1) The parole board's good cause ruling was not in error; (2) the laboratory reports contained the necessary letterhead and signature of the pathologist director so as to qualify them as business records, and, therefore, an exception to the hearsay rule. The laboratory reports constituted substantial evidence sufficient to support revocation of parole.

JONES V. COM., PA. BD. OF PROBATION & PAROLE, 520 A.2d 1258 (Pa. Commw. Ct. 1987)

Facts: Parolee who was recommitted after positive urine test argued that the laboratory report was inadmissible hearsay evidence. At the revocation hearing, parolee's parole officer first testified that parolee had admitted using marijuana, but the officer recanted later in his testimony. The laboratory report in question did not include the letterhead of the laboratory and was not signed by a laboratory staff member.

Held: The Board erred in admitting the laboratory report into evidence because under Pennsylvania law, hearsay evidence is admissible in revocation proceedings only upon a showing of good cause, and must contain some "indicia of reliability."

NEAL V. COM., PA. BD. OF PROBATION & PAROLE, 531 A.2d 119 (Pa. Commw. Ct. 1987)

Facts: At Defendant's parole revocation hearing, the parole officer introduced a computer-generated laboratory report that had no signature or letterhead establishing the laboratory's attestation to its work. The parole officer testified that he had received the report in the mail after sending Defendant's urine sample to the laboratory and conferring with laboratory employees by telephone.

Held: Due process does not require that laboratory personnel be produced at the hearing for firsthand authentication where the hearing officer has found good cause for not doing so. There is, however, a need for some indicia of reliability in the form of a responsible person's signature certifying the identity of the report's subject and the correctness of the result.

JEFFERSON V. COM., PA. BD. OF PROBATION & PAROLE, 506 A.2d 495 (Pa. Commw. Ct. 1986)

Facts: Parolee submitted a urine sample which tested positive. At the revocation hearing, the parole officer entered into evidence a laboratory report indicating that the parolee's urine proved positive. The hearing officer found that there was good cause to admit the report because the Board had a contract with the laboratory to conduct drug screens. Parolee argued on appeal that the laboratory report was inadmissible hearsay.

Held: Under Pennsylvania law, hearsay evidence is admissible in parole revocation proceedings upon a finding of good cause to deny the parolee the right to confront and cross-examine witnesses. The court did not consider the adequacy of the good cause found by the examiner because the question was not properly raised on appeal. Citing a Pennsylvania statute allowing the Board to rely on reports submitted by agents and employees, the court held that the laboratory report was admissible.

POWELL V. COM., PA. BD. OF PROBATION & PAROLE, 513 A.2d 1139 (Pa. Commw. Ct. 1986)

Facts: At Defendant's parole revocation hearing, the hearing examiner allowed into evidence an unsigned computer printout from a private laboratory which indicated that Defendant's urine sample tested positive for drugs. The hearing examiner made a "good cause" finding that the persons performing the test did not have to testify in person because the laboratory report indicated that five different people worked on the test at the laboratory. Defendant challenged the adequacy of the finding that there was good cause for not requiring the presence of any witness from the laboratory.

Held: (1) To admit a laboratory report without witness confrontation, the report must contain indicia of reliability and regularity such as letterhead and signature; (2) The hearing examiner cannot rely upon the laboratory report itself to determine whether or not good cause exists.

WHITMORE V. COM., PA. BOARD OF PROBATION & PAROLE, 504 A.2d 401 (Pa. Commw. Ct. 1986)

Facts: At Defendant's parole revocation hearing, the only evidence of his drug use was a laboratory report indicating that his urine sample tested positive for illegal substances, and a letter from the state health department stating that the laboratory was approved.

Held: The admission of the report was in error because the report was hearsay, no one from the laboratory testified, and the Board did not make a finding that good cause existed for not allowing witness confrontation.

ISAACKS V. STATE, 646 S.W.2d 602 (Tex. Ct. App. 1983)

Facts: Probationer submitted urine samples which tested positive for controlled substance. At the revocation hearing, EMIT™ test system operator testified that she had been trained to operate the EMIT™ test results system machine by the manufacturer and the American Correctional Association. She described the four machines that make up the EMIT™ test results system and testified that she tested the machine for accuracy before testing probationer's sample, and that the sample in question tested positive for an active ingredient of controlled substances. The operator acknowledged that she did not have knowledge of the scientific theory enabling the system to detect a controlled substance. Finally, she testified that the EMIT™ test system is scientifically recognized, but she did not say by what persons or organizations.

Held: "For the results of the EMIT™ test system test to be admissible, it must be shown that the machine has attained scientific acceptance, that properly compounded chemicals were used, that the machine has been periodically checked for accuracy by one who understands its scientific theory, and proof must be offered by one qualified to translate and to interpret the result so as to eliminate hearsay."

2. Chain of Custody

UNITED STATES V. BURTON, 866 F.2d 1057 (8th Cir. 1989)

Facts: At Defendant's probation revocation hearing, the laboratory report indicating positive results was introduced into evidence without testimony from laboratory personnel. After urine samples were taken from Defendant, they remained throughout the day in an unlocked box on the desk of a secretary, who occasionally was away from her desk and office. The samples were stored in a locked refrigerator for two weeks before mailing.

Held: (1) Admission of laboratory reports supported by affidavit from the laboratory director bore sufficient indicia of reliability and did not violate probationer's right to confront witnesses; and (2) although lax, the chain of custody of urine samples was adequate because the samples retained identification labels from receipt of samples from probationer to their delivery to laboratory and return of reports.

SOTO V. LORD, 693 F. Supp. 8 (S.D N.Y. 1988)

Facts: Disciplinary sanctions were imposed against prison inmate whose urine tested positive for marijuana use. A single EMIT™ test was performed on the sample by a private laboratory and the laboratory report was the only evidence. The laboratory report included this statement: "A positive cannabinoid result should be confirmed by an alternative method." The checklist form designed to establish chain of custody had been incompletely filled out and contained erroneous information. Inmate brought civil rights action against prison official.

Held: (1) Assuming that reliance on an unconfirmed EMIT™ test violates due process, prison official was entitled to qualified immunity because the law requiring use of a confirmatory test is not clearly established; (2) Prison official was not entitled to qualified immunity for failure to establish a chain of custody because his conduct was unreasonable in relying upon the inaccurate, incomplete checklist.

WYKOFF V. RESIG, 613 F. Supp. 1504 (N.D. Ind. 1985)

Facts: Inmate challenged the validity and constitutionality of imposing disciplinary sanctions based upon an EMIT™ test confirmed with a TLC test. He also contended that the chain of custody in handling the sample was inadequate because 3 to 4 hours elapsed from the time he gave the sample until it was transported to the sheriff's office and locked in a refrigerator.

Held: (1) Because positive EMIT™ test was confirmed by TLC test, the EMIT™ test was sufficiently reliable. The court held, however, that in the future a positive EMIT™ test should be confirmed by a second EMIT™ test or its equivalent; (2) the chain of custody was adequate because although urine samples were left in an unlocked refrigerator for 3 hours, the door to the room where the refrigerator was located was kept locked and only department personnel had access. The court recommended that urine samples be sealed in the presence of the inmate, that a written record on the location and transportation of samples be kept, and while the samples are in the DOC's possession, they be stored in locked refrigerators with limited access.

McDONALD V. STATE, 550 A.2d 696 (Md. 1988)

Facts: (1) At Defendant's probation revocation hearing, two laboratory reports indicating positive urine tests were introduced without requiring the State to produce the technicians who performed the tests. The laboratory department head testified as to normal procedures, but he did not perform tests on the samples in question nor did he have specific knowledge of how the samples were processed; (2) there was no testimony as to how the urine samples were obtained, labeled, and stored, or how they were delivered to the laboratory.

Held: (1) State statute provided for the admission of laboratory reports into evidence and permits confrontation of the chemists who conducted the tests; (2) the State failed to establish with the requisite degree of certainty that the urine tested was in fact the urine of defendant.

STAHL V. COM., PA. BD. OF PROBATION & PAROLE, 525 A.2d 1272 (Pa. Commw. Ct. 1987)

Facts: Parolee whose parole was revoked after a positive urine test challenged the custodial procedure followed for the urine sample. The labeled urine sample was left in a prison official's office or in a refrigerator before being mailed to a private laboratory.

Held: All that is required to establish "chain of custody" is that the evidence remain unaltered or untainted during the period in which it changed hands and it is not necessary to preclude possibility of doubt. Urinalysis report was properly admitted despite objection as to lack of safeguards eliminating access by other inmates.

3. Duty to Preserve Specimens

STATE V. QUELNAN, 767 P.2d 243 (Hawaii 1989)

Facts: Probationer's January 26, 1988, and February 11, 1988, urine samples tested positive for drugs. On April 4, 1988, defense counsel requested the urine samples for the purpose of conducting independent testing of the specimens. The samples at that time were in the possession of an independent testing laboratory which retained positive samples for 6 months. The probation office responded to defense counsel's request by stating that the samples had not been saved. After probation had been revoked, defense counsel learned that the samples had been preserved by the laboratory.

Held: (1) Upon defense counsel's timely request for production, the State should have produced the urine samples in order to give probationer the opportunity to conduct independent testing; (2) admission of probationer's positive urinalysis results into evidence solely through probation officer's testimony violated probationer's right of confrontation.

PEOPLE V. MOORE, 666 P.2d 419 (Cal. 1983)

Facts: Defendant probationer submitted a urine sample on January 20, 1981, which tested positive. On April 2, 1981, his motion to substitute counsel was granted and the matter was continued until May 4, 1981. On that date the State moved for a continuance and Defendant's counsel requested inspection of the urine sample. The testing laboratory, however, only retained samples for 3 months. No request had been made by the probation officer to retain the sample for longer than 3 months.

Held: The probation department, having requested a revocation based upon the test results of a urine sample, had a duty to preserve and disclose the sample even in the absence of a request therefor. Failure to preserve the sample denied Defendant the opportunity to independently examine the sample and therefore deprived him of a fair hearing.

4. Reliability/Confirmation of Test Results

PERANZO V. COUGHLIN, 850 F.2d 125 (2d Cir. 1988)

Facts: Prison inmates brought action challenging the reliability of EMIT™ test results as evidence of drug use. Evidence was presented that the testing procedure (an initial test and a subsequent confirming test) had a 98 percent accuracy rate.

Held: The use of the test results may be relied upon as sufficient evidence to warrant prison discipline.

SPENCE V. FARRIER, 807 F.2d 753 (8th Cir. 1986)

Facts: Inmates brought civil rights action challenging constitutionality of urine testing program. Tests were performed both randomly and on inmates suspected of drug use. The prison used the EMIT™ test, and positive results were tested twice. Inmates could not call upon expert witnesses and could not have a confirmatory test by another method.

Held: (1) A urinalysis is a search and seizure, but the random testing procedures are reasonable under the Fourth Amendment; (2) refusal to allow inmates to have independent confirmatory tests and expert witnesses does not violate the right to due process; (3) the EMIT™ test results have been shown to be widely accepted in the scientific community and are thus admissible.

SOTO V. LORD, 693 F. Supp. 8 (S.D.N.Y. 1988)

Facts: Disciplinary sanctions were imposed against prison inmate whose urine tested positive for marijuana use. A single EMIT™ test was performed on the sample by a private laboratory and the laboratory report was the only evidence. The laboratory report included this statement: "A positive cannabinoid result should be confirmed by an alternative method." The checklist form designed to establish chain of custody had been incompletely filled out and contained erroneous information. Inmate brought civil rights action against prison official.

Held: (1) Assuming that reliance on an unconfirmed EMIT™ test violates due process, prison official was entitled to qualified immunity because the law requiring use of a confirmatory test was not clearly established; (2) prison official was not entitled to qualified immunity for failure to establish a chain of custody because his conduct was unreasonable in relying upon the inaccurate, incomplete checklist.

ADKINS V. MARTIN, 699 F. Supp. 1510 (W.D. Okla. 1988)

Facts: Prison inmate challenged the institutional urinalysis program, alleging a false positive due to medication. Laboratory double tested positive readings of thin layer chromatography or enzyme immunoassay test with gas chromatography test.

Held: The utilization of two separate and independent tests each having a different scientifically accepted methodology satisfies the requirements of due process.

WYKOFF V. RESIG, 613 F. Supp. 1504 (N.D. Ind. 1985)

Facts: Inmate challenged the validity and constitutionality of imposing disciplinary sanctions based upon an EMIT™ test confirmed with a TLC test. He also contended that the chain of custody in handling the sample was inadequate because 3 to 4 hours elapsed from the time he gave the sample until it was transported to the sheriff's office and locked in a refrigerator.

Held: (1) Because positive EMIT™ test was confirmed by TLC test, the EMIT™ test was sufficiently reliable. The court held, however, that in the future a positive EMIT™ test should be confirmed by a second EMIT™ test or its equivalent; (2) the chain of custody was adequate because although urine samples were left in an unlocked refrigerator for 3 hours, the door to the room where the refrigerator was located was kept locked and only department personnel had access. The court recommended that urine samples be sealed in the presence of the inmate, that a written record on the location and transportation of samples be kept, and while the samples are in the DOC's possession, they be stored in locked refrigerators with limited access.

HIGGS V. BLAND, 888 F.2d 443 (6th Cir. 1989)

Facts: Inmates appealed from denial of moton for preliminary injunction seeking to enjoin prison officials from taking disciplinary action based on urinalysis tests. Prison procedure required EMIT™ test, with repeat testing by EMIT™ system for positive results.

Held: A positive EMIT™ test result is sufficient evidence to satisfy due process requirements in a prison disciplinary proceeding.

JENSEN V. LICK, 589 F. Supp. 35 (D.N.D. 1984)

Facts: Defendant inmate challenged the constitutionality of random urine screening program. Under the prison's program, testing was random unless an inmate was suspected of drug abuse; the inmate was notified the night before the test; samples were tested using the EMIT™ test system; and repeat tests were made on samples testing positive. Defendant refused to submit to testing and was disciplined for his refusal. He argued on appeal that the EMIT™ test system was unreliable.

Held: Evidence established that EMIT™ test was 95 percent accurate, which the court concluded was "tantamount to almost complete certainty" and was thus sufficiently reliable to support disciplinary action against inmates.

STATE V. JOHNSON, 527 A.2d 250 (Conn. App. Ct. 1987)

Facts: At Defendant's probation revocation hearing, his probation officer testified that Defendant's urine sample twice tested positive for cocaine metabolites using the EMIT™ test results. Defendant's expert witness, a pharmacologist, testified that the percentage of error in the EMIT™ test was 5 - 10 percent, and that dual testing using the same test was not an effective method of confirmation.

Held: The court was not required to accept as conclusive the pharmacologist's testimony on the reliability of the EMIT™ test. The court did not abuse its discretion in determining from the evidence that Defendant violated his probation.

JONES V. UNITED STATES, 548 A.2d 35 (D.C. 1988)

Facts: Defendant was convicted of possession of drugs. His urine had tested positive for cocaine the day after his arrest. At trial, a pretrial officer testified that Defendant's urine had tested positive, and about the pretrial agency's drug testing procedures, the test itself, and his knowledge of the general accuracy of the test results. On appeal, Defendant argued that evidence of the drug test should have been excluded because the EMIT™ test was not proved generally accepted in the scientific community and because he could not adequately confront the drug test evidence because the pretrial officer lacked the necessary scientific expertise.

Held: (1) Although the record in the present case did not include sufficient testimony on the general acceptance of the EMIT™ test in the scientific community, the court took judicial notice of another trial court decision in the same jurisdiction and of the opinions of courts in other jurisdictions and held that EMIT™ test results are presumptively reliable and admissible into evidence; (2) the agency's record reporting the test result falls within the business exception to the hearsay rule because it contains objective facts rather than expressions of opinion and bears sufficient indicia of reliability.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983)

Facts: As a condition of probation, Defendant had to refrain from using controlled substances. EMIT™ test results indicated use of drugs. Defendant argued that the requirement that he submit to urine testing was unreasonable and that the EMIT™ test was unreliable.

Held: (1) Request for urine specimen clearly arose out of Defendant's probationary status and thus was reasonable; (2) trial court considered expert testimony concerning the operation and accuracy of the EMIT™ test and that the test results were admissible was supported by the evidence.

PEOPLE V. WALKER, 517 N.E.2d 679 (Ill. App. Ct. 1987)

Facts: Defendant's probation was revoked after his urine sample tested positive for marijuana use. The sample was analyzed twice using the EMIT™ test and the results were positive both times. Defendant contended that the EMIT™ test was unreliable and therefore the evidence was insufficient to support the revocation.

Held: "[W]here the EMIT™ test procedure is performed twice, it is sufficiently reliable where it is the only evidence of drug use in a probation revocation proceeding."

LAHEY V. KELLY, 524 N.Y.S.2d 30 (N.Y. 1987)

Facts: Inmates argued that the EMIT™ drug test was not sufficiently reliable to support the determination that an inmate had used drugs.

Held: Positive EMIT™ test results, when confirmed by a second EMIT™ test or its equivalent, are sufficiently reliable to support a determination that an inmate has used illegal drugs.

VASQUEZ V. COUGHLIN, 499 N.Y.S.2d 461 (N.Y. App. Div. 1986)

Facts: Defendant inmate's urine samples tested positive under the EMIT™ test system. He argued that EMIT™ test results were not reliable enough to constitute substantial evidence.

Held: The reliability of EMIT™ test results for use in prison disciplinary proceedings has been established by ample scientific evidence.

BROWN V. SMITH, 505 N.Y.S.2d 743 (N.Y. Sup. Ct. 1985)

Facts: Inmates brought action challenging the reliability of dual EMIT™ tests, the proficiency of the employees assigned to administer the test, and the adequacy of the foundation presented to admit the results into evidence. They presented expert testimony that the EMIT™ test should be confirmed by an alternate method. Expert testimony conflicted on whether ingestion of drugs such as aspirin might produce false positives.

Held: (1) EMIT™ testing system was not sufficiently reliable to justify imposition of disciplinary penalty on sole basis of two positive readings: positive reading should be confirmed by alternate test and at least one of the test operators should by interviewed by the hearing officer; (2) inmates should receive copies of documents to be introduced at hearing and should have opportunity to present questions to be asked the test operator.

McQUEEN V. STATE, 740 P.2d 744 (Okla. Crim. App. 1987)

Facts: Defendant's probation was revoked based upon positive laboratory test results and his admission to probation officer of drug use. Defendant argued on appeal that there was insufficient evidence to revoke his probation and that the chain of custody as to the urine samples was inadequate.

Held: Probationer's admissions of drug use were sufficient to establish violations of conditions of probation, even without laboratory analysis or with an inadequate chain of custody.

IN RE JOHNSTON, 745 P.2d 864 (Wash. 1987)

Facts: Prison inmates challenged use of single positive EMIT™ test result as sole basis for imposition of disciplinary sanctions, arguing such evidence is insufficient to satisfy due process requirements.

Held: (1) The evidentiary requirements of due process are satisfied if there is "some evidence" in the record to support a prison disciplinary proceeding; (2) the "Frye test" (under which evidence derived from a scientific principle or theory is admissible only if the principle has achieved general acceptance in the community) is inapplicable in the context of prison disciplinary proceedings; and (3) a single positive result to an EMIT™ test is "some evidence" of drug use, and the use of such test as the basis for disciplinary sanctions does not violate due process requirements.

5. Drug Testing as a Condition of Probation

UNITED STATES V. DUFF, 831 F.2d 176 (9th Cir. 1987)

Facts: Although conditions of probation did not expressly authorize drug testing, Defendant's probation officer ordered him to submit to drug testing based upon probationer's conduct, which suggested drug use. Probation was revoked after three separate samples tested positive.

Held: The probation officer had the power to order Defendant to submit to drug testing even though the court had not explicitly imposed such a condition. Urine testing was consistent with the condition of probation requiring Defendant to refrain from violating the law and the probation officer had a reasonable suspicion that Defendant might be using drugs.

SPENCE V. FARRIER, 807 F.2d 753 (8th Cir. 1986)

Facts: Inmates brought civil rights action challenging constitutionality of urine testing program. Tests were performed both randomly and on inmates suspected of drug use. The prison used the EMIT™ test, and positive results were tested twice. Inmates could not call upon expert witnesses and could not have a confirmatory test by another method.

Held: (1) A urinalysis is a search and seizure, but the random testing procedures are reasonable under the Fourth Amendment; (2) refusal to allow inmates to have independent confirmatory tests and expert witnesses does not violate the right to due process; (3) the EMIT™ test has been shown to be widely accepted in the scientific community and is thus admissible.

UNITED STATES V. WILLIAMS, 787 F.2d 1182 (7th Cir. 1986)

Facts: Condition of probation required Defendant to submit to urine tests because a presentence test was positive for illegal substances. Defendant challenged the constitutionality of the drug testing condition, arguing that the taking of a urine sample was an unreasonable search and seizure.

Held: The drug testing condition bears a reasonable relationship to the purposes of the Probation Act and the needs of Defendant and was thus permissible under the Fourth Amendment.

STATE V. SMITH, 540 A.2d 679 (Conn. 1988)

Facts: The trial court entered order 1 year after the original sentence modifying probation to include urine testing. Defendant's urine sample tested positive and, at revocation hearing, he admitted drug use.

Held: Trial court had continuing authority to modify terms of probation 1 year after sentencing and the modification did not have to be imposed by the sentencing judge.

SMITH V. STATE, 298 S.E.2d 482 (Ga. 1983)

Facts: As a condition of probation, Defendant had to refrain from using controlled substances. EMIT™ test indicated use of drugs. Defendant argued that the requirement that he submit to urine testing was unreasonable and that the EMIT™ test was unreliable.

Held: (1) Request for urine specimen clearly arose out of Defendant's probationary status and thus was reasonable; (2) trial court considered expert testimony concerning the operation and accuracy of the EMIT™ test and that the test results were admissible was supported by the evidence.

***PEOPLE V. ROTH*,** 397 N.W.2d 196 (Mich. Ct. App. 1986)

Facts: Probationer argued that condition of probation requiring him to submit to urine tests was unconstitutional.

Held: The condition of probation requiring submission to unannounced urine tests is both lawful and rationally tailored to probationer's rehabilitation.

***STATE V. SIGLER*,** 769 P.2d 703 (Mont. 1989)

Facts: Probationer failed to appear for a urine test as required by conditions of probation. Although probationer had been convicted on drug charges, his probation officer had no specific reason for believing probationer was using drugs when he requested the urine sample. Probationer contended that there was no "articulable reason" for requiring him to submit to the urine test.

Held: Because Defendant had failed several prior drug tests and because the probation officer believed the rehabilitation process could not begin until he was sure Defendant was free from drugs, there were reasonable grounds to require that Defendant submit to urine testing.

***CLAY V. STATE*,** 710 S.W.2d 119 (Tex. Ct. App. 1986)

Facts: As a condition of probation, Defendant was to submit a urine sample to the probation officer upon demand. Defendant failed to submit urine samples on three occasions and his probation was revoked.

Held: The condition of probation that Defendant submit a urine sample at any time requested by the probation officer is reasonably related to the purposes of probation and does not violate Defendant's right against unreasonable search and seizure.

***MACIAS V. STATE*,** 649 S.W.2d 150 (Tex. Ct. App. 1983)

Facts: Defendant, who had been convicted of a drug offense, was required as a condition of probation to submit to weekly urine testing. Probation was revoked because Defendant tested positive and because he failed to submit to testing as scheduled. On appeal, Defendant argued that the mandatory urine test as a condition of probation was a warrantless and unreasonable search in violation of the Fourth Amendment.

Held: The requirement that Defendant submit to weekly urine testing is reasonably related to the purposes of probation because it dissuades him from drug use and allows his probation officer to determine if rehabilitation is occurring. The condition does not constitute an unreasonable search and seizure.

***STATE V. PARRAMORE*,** 768 P.2d 530 (Wash. Ct. App. 1989)

Facts: Defendant, who had been convicted of selling marijuana, was required as a condition of probation to submit to urine testing.

Held: Condition that defendant who was convicted of selling marijuana submit to urine testing was permissible crime-related prohibition related directly to his conviction.

6. Juvenile Drug Testing

***IN RE C.J.W.*,** 727 P.2d 870 (Colo. Ct. App. 1986)

Facts: Juvenile failed to submit to urine testing as required by conditions of probation, and she admitted such failure to the probation officer.

Held: Hearsay testimony of probation officer was admissible to establish that juvenile had violated conditions of probation.

***IN RE JIMI A.*,** 257 Cal. Rptr. 147 (Cal. Ct. App. 1989)

Facts: Juvenile defendant was found to have disturbed the peace and committed a battery on school property. Defendant had a history of admitted substance abuse and had no parental supervision in the evening hours. As a condition of probation, defendant was required to submit to random drug testing.

Held: Given the juvenile defendant's background of admitted substance abuse and lack of parental supervision in the evening, the inclusion of drug testing as a condition of probation was appropriate.

APPENDIX B: FORMS

Attachment 1

INSTRUCTIONS TO JUVENILE OFFENDERS

1. Cooperate with the Juvenile Probation or Parole Officer and answer all questions honestly.

2. Provide or authorize release of any records requested by the Juvenile Probation or Parole Officer. These may include: legal, medical, psychological, substance abuse treatment, educational, military employment, financial, Juvenile Court, or other records.

3. As a condition of supervision, offender is subject to random urine testing for alcohol and drug usage at such times as juvenile is ordered to submit to these by a Juvenile Probation or Parole Officer.

4. Juvenile is advised that failure or refusal to submit to such testing or tampering with a urine specimen should be considered the same as a "positive" test.

5. Any positive result can lead to revocation and incarceration or such lesser penalty as may be appropriate.

6. Offender will inform the Juvenile Probation or Parole Officer of all arrests and convictions. Inform the Juvenile Probation or Parole Officer of any new arrests that occur prior to sentencing in this case.

ACKNOWLEDGEMENT

I, the undersigned, have read or had read to me the above information and understand these instructions. I understand that the Court will be informed if I fail to cooperate or provide false, incomplete, or misleading information.

____
Probation or Parole Officer

____
Signature of Juvenile

____
Date

Attachment 2

DRUG TESTING AGREEMENT

I, ____
(probationer/parolee)

understand that I have been court ordered to undergo urinalysis drug testing throughout my probation. I further understand that the results of this test will be confidential, with the exception that these results may be made available to my probation officer or the court system when appropriate. I understand that repeated positive drug tests may result in a violation of my probation leading to revocation.

____
Signature of Juvenile

____
Juvenile Probation or Parole Officer

____
Date

Attachment 3

REQUEST FOR DRUG TEST(S)

OFFENDER IDENTIFICATION INFORMATION:

Probationer/Parolee: ____________________ Age ____ Sex ____

Social Security #: ____________ Agency #: ____________

Officer Name: ____________ Officer District: ____________

STATEMENT:

I am neither under the influence of any drugs or medication, nor have I taken any drugs or medication in the past three (3) weeks, other than those listed below. I certify that the urine specimen is my own, has not been tampered with by myself or anyone else, and I have sealed the container.

Medication within the past three (3) weeks: ____________

as prescribed for me by: (Physician's Name) ____________

Date: ________ Time: ______ Container sealed by: ____________

Collection Observer: ____________ Juvenile Signature: ____________

ADMISSION:

I acknowledge that I have used the following illegal drugs within the past three (3) weeks: ____________

Probationer/Parolee Signature: ____________ Date: ____________

REFUSAL TO SUBMIT TO DRUG SCREEN: Date: ____________

Probationer/Parolee Signature: ____________ Officer Signature: ____________

TYPE OF DRUG SCREEN REQUESTED:

Reason for Request: ____Intake ____ Suspected Drug Use ____ Random Test ____ Scheduled Test ____Other, Specify: ________

_____ Full Drug Screen (Tests for 5 categories) _____ Partial Drug Screen (Tests for 1-3 categories) Specify Drugs: _____

CHAIN OF CUSTODY:

Date/Time	Released By	Received By	Purpose of Change

TEST SITE USE ONLY:

Test Methodology: ____________ Test Date: ____________

Test Performed:

____Barbiturate ____Benzodiazepine ____THC ____Cocaine ____Amphetamine ____Opiate ____ Other, Specify: ________

Location Sent ____________

Container Received by: ____________ Time: ____________

Specimen Tested and Results Were: ____NEGATIVE ____POSITIVE for ____________

Specimen Tray # ________ Position # ________

Operator: ____________ Date: ____________

Date Results Received ____________

Confirmation Test: Yes_____ No _____ Confirmation Methodology: ____________

Test Performed:

____Barbiturate ____Benzodiazepine ____THC ____Cocaine ____Amphetamine ____Opiate ____Other

Specimen Tested and Results Were: ____NEGATIVE ____POSITIVE for ____________

Container Received by: ____________ Time: ____________

Location Sent: ____________ Date Sent: ____________

Date Results Received: ____________

BEST COPY AVAILABLE

Attachment 4

SUBSTANCE/MEDICATION SCREEN RECORD

Probationer/Parolee
Name:________________________ Social Security #:________________________

HT:________ WT:________ Sex:________ Age:________ DOC #:________________________

Is the juvenile offender taking any of the following medications or prescriptions? If yes, please list time and amount of last dosage.

		Time/Amount
________	Allergy Medication (Primatine, etc.)	________________
________	Antibiotics	________________
________	Over the Counter Stimulants	________________
________	Blood Pressure Medicine	________________
________	Cortisone/Steroids	________________
________	Arthritis Medication (Advil, Nalfon, etc.)	________________
________	Water Pills (Diuretics)	________________
________	Heart Medicine	________________
________	Sleeping Pills/Sedatives	________________
________	Food Containing Poppy Seeds (w/in 24 hrs)	________________
________	Tranquilizers/Antidepressants	________________
________	Appetite Depressant	________________
________	Decongestants/Nasal Spray	________________
________	Cold Medication	________________

Any other drugs or medication? If yes, please list ________________________

____

________________________ ________________
Signature of Juvenile Date

________________________ ________________
Witness Date

Name of Physician(s)________________________ ________________
Date

Attachment 5

SPECIMEN COLLECTION CHECKLIST

Name of Specimen Provider ____________________ DOC# ____________________

Test Conducted By ____________________ Date/Time ____________________

INITIAL EACH STEP UPON COMPLETION

_______ 1. Verify ID of Specimen Provider.

_______ 2. Have Provider sign Consent and Release of Information Form and Substance/Medication Screen Record.

_______ 3. Place Name, DOC#, Agency and Office Number on Container Label, Provider Initials Label.

_______ 4. Give Provider container. Supervising officer present.

_______ 5. Collection observed.

_______ 6. Seal container top tightly. Place Providers Name and DOC# on evidence tape with marker pen. Provider initials evidence tape next to name.

_______ 7. Specimen stored immediately or sent to on-site testing.

_______ 8. Complete Chain of Custody Form to accompany specimen to laboratory.

Attachment 6

SEAL PLACE **SEAL** OVER TOP OF CONTAINER

LABEL Wrap around container, overlapping ends of seal strip.

NAME OF Juvenile____________________________CLIEN#__________

Signature

PROBATION OR PAROLE OFFICER ____________________________

DATE/TIME COLLECTED____________________________

MONITORED BY____________________________

Signature

Attachment 7

CHAIN OF CUSTODY FORM

Name of Juvenile ______________________________

Signature of Juvenile ______________________________

Juvenile's I.D. Number ______________________________

Specimen Collected By ______________________________

Collection Observed By ______________________________

Date and Time ______________________________

For the Analysis of ______________________________

VERIFICATION, IDENTITY AND CUSTODY OF THE SPECIMEN MAINTAINED BY:

Released By	Received By	Date/Time

TO BE COMPLETED BY TESTING PERSONNEL ONLY

Seal Broken By ______________________ Date/Time __________

Test Performed By ______________________ Date/Time __________

Test Verified By ______________________ Date/Time __________

Attachment 8

URINALYSIS REPORT

Date:______________________________

Time:______________________________

Juvenile
Name:____

Probation or Parole
Officer's
Name:____

CHECK AND INITIAL APPROPRIATE BOX BELOW:

This specimen is being tested for narcotic, dangerous drug or marijuana:

________ I HAVE NOT taken any medication, narcotic or over-the-counter drug 72 hours prior to producing this urine specimen.

________ I HAVE taken medication, narcotic or over-the-counter drug 72 hours prior to producing this urine specimen. I took:

____

____

as prescribed for me
by:____
Physician's name

In producing this urine specimen, I certify: 1) I do not have on my person nor am I using any other urine or device which will cause the substitution of another's urine for my own; 2) I have not taken any substance which will cause any change in my urine for the purpose of avoiding detection of illegal drugs I have used.

I certify the above information is true and understand that giving false or misleading information shall constitute a violation of my probation.

____
Probationer's Signature

Specimen Collected
at____

Monitored by____________________________________

Attachment 9

POSITIVE DRUG TEST STATEMENT

I, ____
(juvenile)

understand that I have received a positive urinalysis drug test

for ____ on___________
(Drug) (Date)

I further understand that I have 30 days to request a re-test of the specimen which yielded the positive result and that if I do not request a re-test within 30 days, that this represents an acceptance by me that the result is, in fact, positive. If I do request a re-test, I understand that I will pay all costs associated with the confirmation test, provided the confirmation test is also positive. If the confirmation test is negative, the agency will pay the costs for the re-test.

_____ I do hereby waive my option of a confirmation test and accept the positive result of the initial screen. I recognize that this acceptance constitutes a full admission of drug use during the period covered by the specimen.

_____ I do hereby request a re-test (confirmation test) of the specimen which yielded the above positive result. I will pay the cost for the re-test if the initial positive test is confirmed.

____ ______________________
(Signature of Juvenile) (Date)

____
(Officer Signature)

Attachment 10

AUTHORIZATION FOR RELEASE OF DRUG TEST AND RESULT INFORMATION

Juvenile's Name____ Birthdate______________________

I, ______________________________ and/or ______________________________
(Juvenile's Name) (Name of Parent or Conservator)

Authorize____
(Releasing Agency)

Disclose To:____
Name

____
Street Number Street Name

____
City State Zip

____
Name, if any, of person to whom attention should be made

The Following information:____
(Specify the nature and extent of information to be released)

For the Following Purpose:____
(State Purpose of Disclosure)

This authorization and consent is made for the purpose of reporting my drug test(s) and drug test result(s) to the above designated individual and/or organization.

This authorization and consent is subject to revocation by the undersigned at any time except to the extent that action has been taken in reliance thereon. If not earlier revoked, this consent terminates on:

____
Month Day Year

Releasor, its agents and its employees are hereby relieved of any responsibility and liability that may arise from the release or reproduction of such records and/or information.

____
(Signature of Juvenile) (Date)

____
(Signature of Parent or Conservator) (Date)

____
(Witness) (Date)

Prohibition on redisclosure: This information has been disclosed to you from records whose confidentiality is protected by Federal Law. Federal regulations (42 CFR Part 2) prohibit you from making any further disclosure of this information except with the specific written consent of the person to whom it pertains. A general authorization for the release of medical or other information if held by another party is not sufficient for this purpose. Federal regulations state that any person who violates any provision of this law shall be fined not more than $500, in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

BEST COPY AVAILABLE

Attachment 11

URINALYSIS TEST RECORD

Agency Submitting Specimen ______________________________

Date of Run ______________ Lab Tech ______________________________

Operator's Initials ______________ Calibration Expiration Date ______________________________

Lot Number of Reagent ______________ Expiration Date of Reagent ______________________________

Negative Cal. Rate ______________________________

Low Cutoff ______________________________

Control Number	IRS	Assay Results	Pos.	Neg.	If Positive, Confirmation Results

PROBATIONER/PAROLEE STATUS REPORT

To Judge:____

From:____
Probation Officer

Approved:____
Chief Probation Officer

RE: Probationer/Parolee______________________________

Docket No(s)____________________Probation No.____________________

Offense____

Probation Date____________________Expiration Date____________________

Date:____________________Attachments:____________________

PURPOSE:

NOTIFICATION THAT URINE SPECIMEN WAS TAKEN______________________________

WAS POSITIVE FOR:______________________________

WAS NEGATIVE______________________________

SUMMARY:

Another positive for illicit drugs, within the next six months, will result in a request for a Juvenile Probation or Parole Violation Hearing.

Please respond if this course of action is unacceptable.

Judge's Response: Please indicate any decision below and return it to the probation department.

DECISION JOURNALIZED? Yes_____ No_____
(Note: Decisions such as capias, extension, and early release must be journalized.)

Judge's Signature______________________________Date____________________

Attachment 13

AGENCY MONTHLY DRUG TESTING SUMMARY LOG

Test Site: ____________________

Report for tests performed
during the month of ____________________ Facility ____________________

	Initial		Random		Offender	
	#Pos	#Neg	#Pos	#Neg	#Pos	#Neg
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Drug Tested: ____________	___	___	___	___	___	___
Total: ____________	___	___	___	___	___	___

Attachment 14

DRUG TESTING CONTROL LOG

Probation Officer	Collection Personnel	Offender	Case ID#/ SS#	Time/Date Urine Collected	Time/Date Urine Transferred to Test Site	Date Test Results Received	Results POS/NEG Code	Confirmed YES/NO	Final Action Code

POSITIVE TEST CODES:

1 Opiates
2 Amphetamines
3 Barbiturates
4 Benzodiazepines
5 Cocaine
6 Cannabis (THC)
7 Methaqualone
8 Phencyclidine
9 Alcohol

FINAL ACTION CODE:

A - Verbal Warning
B - Written Warning
C - In-House Sanction
D - Increase Testing Frequency
E - Treatment Ordered
F - Partial Revocation
G - Full Revocation

APPENDIX C:
DRUG TESTING METHODOLOGIES

Radioimmunoassay (RIA) measures the free or bound radioactivity after urine and radioactively labeled drugs are mixed with antibodies. The measurement indicates the presence of drugs because both sets of drugs, those in the urine and those radioactively labeled, compete for binding sites on the antibody, and hence can be measured by the amount of radioactivity present after an incubation period (del Carmen, Sorenson, 1988: 3). This type of immunoassay test is not usually as feasible for implementation into onsite testing because of the radioactive materials used and the expense involved.

The latex agglutination inhibition immunoassay technique is currently available in compact, onsite, and immediate result test form. This test relies on the competition for binding to antibodies between latex-drug conjugate and drugs which may be present in the urine being tested.

Fluorescence polarization immunoassay (FPIA) methodology employs fluorescent tracers that compete with drugs in the urine to bind with antibodies. The presence of drugs is measured by the polarization of light that occurs when the tracer is unable to locate binding sites.

Enzyme immunoassay methodologies involve enzyme-labeled drugs that are injected into the urine along with antibodies. Presence of drugs is measured by the binding of enzymes, which compete with the drugs in the urine for binding sites. If drugs are present, the antibodies bind with them. This methodology is currently available in field test as well as laboratory form (del Carmen, Sorenson, 1988: 3).

Those agencies planning to contract out for testing services may use forensic laboratories which use thin layer chromatography (TLC). TLC is a procedure whereby different molecular structures are separated and then identified on the basis of the distance the substance travels through a membrane in comparison to a solvent, the Rf value. The Rf value, color, and appearance after various applications make the identification of many types of drugs possible. However, the accuracy of the technique depends to a large extent on the ability of the technician (del Carmen, Sorenson, 1988: 4). Because this is a very subjective procedure and is not a methodology recommended by the NIDA guidelines for initial screening, it is strongly recommended that probation or parole agencies contracting out for testing services require that an immunoassay technique is used for initial screens.

Two confirmatory methods used by forensic laboratories include gas chromatography (GC) and high performance liquid chromatography (HPLC). Both of these methods have significant disadvantages and are not considered to be an acceptable confirmatory method by the NIDA guidelines. Therefore, according to NIDA, the only acceptable confirmatory method is mass spectrometry used in conjunction with gas chromatography (GC/MS).

GC/MS operates by separating and fragmenting substances and then recording the response of this fragmentation. The recording of peaks upon which the substances lose their ionization charge identifies them. This method is considered to be the gold standard in confirmatory testing and has up to a 99-percent accuracy rating. However, this method requires a skilled technician to operate the equipment and accurately identify the peaks. In addition, this elaborate procedure is extremely expensive (del Carmen, Sorenson, 1988: 5). Therefore, it is not feasible for probation or parole agencies at this time to operate their own GC/MS systems. When determined to be needed in a criminal justice setting, GC/MS confirmations will require agencies to contract out for services.

In March of 1988 the Bureau of Justice Assistance and the National Institute of Justice jointly funded a research project that compared the "proficiency" of three of these immunoassay methodologies and thin layer chromatography (TLC) in detecting the five drugs most commonly used by persons under arrest or supervision by the criminal justice system. Latex agglutination inhibition (developed by Roche) was not FDA approved at the time the study was begun and therefore was not included in the study. The study was made possible through the cooperation of the drug testing manufacturers.

APPENDIX D: BJA/NIJ DRUG TESTING TECHNOLOGIES STUDY[1]

The general outline of the study was quite simple. Urine specimens from persons under parole supervision in Los Angeles were divided into five parts, each of which was tested using one of five technologies: thin layer chromatography (TLC), enzyme immunoassay (EIA) as manufactured by Syva (EMIT)(*), fluorescence polarization immunoassay (FPIA) as manufactured by Abbott (TDX), and radioimmunoassay (RIA) as manufactured by Roche (Abuscreen). The findings for each of the four were compared to those of GC/MS, which, for the purpose of this study, was regarded as the "gold standard" or the "true" measure of the contents of the divided specimen. The five drugs screened were those most commonly found among arrestee populations: opiates, marijuana, cocaine, phencyclidine, and amphetamine/methamphetamine.

The conclusions from the study were as follows:

- Standard thin layer chromatography was demonstrated to be seriously deficient in its ability to detect the five substances examined in this study; hence, it should not be used in screening or confirming urine samples for illegal drug use from criminal justice populations.
- When using the Federal guidelines for establishing cutoff levels for immunoassays (or the manufacturer cutoff if different), no technology is superior to the others in detecting all five drugs. Although there are some specific differences by drug type, these results are unlikely to be helpful to agencies choosing a technology since populations are usually screened for several drugs.
- The three immunoassays examined in this Study—EIA, RIA, and FPIA—are about equally effective in limiting false positives for the substances tested. Overall, about 1 to 2 percent of screened samples were falsely identified as positive.
- Although using an immunoassay as a drug-screening technology generates few false positive errors, confirmation of screened positives should be required, especially if one positive drug test will result in serious punitive action.
- The three immunoassays examined are likely to overlook drug use about 20 percent of the time when illegal substances are actually present. In some instances, principally for marijuana, lowering the cutoff substantially reduces the rate of these false negative results.
- To insure the highest level of accuracy, users of urine-screening technologies should carefully follow the manufacturer's instructions for determining whether a urine sample is positive or negative and refrain from deviating from the manufacturer's suggested cutoff level.
- Given the high rate of false negative test results in screening urine for marijuana, manufacturers of urine-screening technologies should make available screening tests which can detect marijuana at lower levels. Similar changes in the screening test for opiates and cocaine do not appear necessary at this time.
- Drug testing performed in an onsite testing facility can be just as accurate as testing performed in a full-service laboratory.

Selecting the most appropriate methodology does not require a degree in toxicology. However, it does require that an agency examine current testing technologies and become familiar with them in order to select the methodology that best fits the needs of the agency.

---

[1] C.A. Visher and K.E. McFadden. A Comparison of Urinalysis Technologies for Drug Testing in Criminal Justice, *Research in Action*, National Institute of Justice, Washington, D.C., 1991

APPENDIX E: APPROXIMATE DURATION OF DETECTABILITY OF SELECTED DRUGS IN URINE

Substance	Duration of Detectability*
Amphetamine	48 hours
Methamphetamine	48 hours
Barbiturates	
Short-acting	24 hours
Intermediate-acting	48–72 hours
Long-acting	7 days or more
Benzodiazepines	3 days (therapeutic dose)
Cocaine Metabolites	2–3 days
Methadone	3 days (approximate)
Codeine/Morphine	48 hours
Propoxyphene/ Norpropoxyphene	6–48 hours
Cannabinoids (marijuana)	
Single use	3 days
Moderate use (4 times per week)	4 days
Heavy use (daily)	10 days
Chronic heavy use	21–27 days
Methaqualone	7 days or more
Phencyclidine (PCP)	8 days (approximate)

SOURCE: *Journal of the American Medical Association's Council on Scientific Affairs* (1987, pp. 3112).

* Interpretation of the duration of detectability must take into account many variables, such as drug metabolism and halflife, subject's physical condition, fluid balance and state of hydration, and route and frequency of ingestion. These are general guidelines only.

GLOSSARY OF TERMS

Abuse	Prolonged, persistent or sporadic, excessive drug use which is inconsistent with or unrelated to accepted medical practice.
Accuracy	The ability of a testing method to consistently produce the true identity or quantity of the measured substance.
Addict	A person who cannot resist a habit, especially the use of drugs or alcohol, for physiological or psychological reasons.
Addiction	The state of being given up to some habit, especially strong dependence on a drug.
Agglutination	The process of particles forming from the binding of antibody and latex-coated drug metabolite. Agglutination occurs with a negative urine specimen.
AIDS	Acquired Immune Deficiency Syndrome. A viral disease that damages the body's immune system, making the infected person susceptible to a wide range of serious diseases. May also involve neurologic symptoms.
Aliquot	A portion of a specimen used for testing.
Amobarbital	A moderately long acting barbiturate used both as a sedative and to control convulsions.
Amphetamines	A class of drugs that have pronounced stimulant effects on the central nervous system. Street names include speed, uppers, bennies, pep pills and the so-called "designer drugs" (such as Ecstasy).
Analyte	Substance to be measured.
Antagonist	A drug that blocks or counteracts the effect of another drug.
Antibody	A substance which binds to a specific drug or drug metabolite.
Antidepressant	A major classification of drugs used medically to improve mood in severely depressed patients. Included are the tricyclic compounds, Amitriptyline (Elavil) and Imipramine (Trofranil). These are rarely used for nonmedical purposes since they have little immediate pleasurable effect on normal mood states.
Antigen	A substance, alien to the body, which triggers the formation of an antibody.
Barbiturates	The largest and most common group of the synthetic sedative/hypnotics. In small doses, they are effective tranquilizers used in sedation and in relieving tension and anxiety. In larger doses, they are used as hypnotics (sleep inducers). When large dosages are not followed by sleep, signs of mental confusion, euphoria, and even stimulation may occur—effects that are similar to those of alcohol. Barbiturates are often used or abused "recreationally" by people seeking similar effects to those produced by alcohol. Barbiturates are also used in combination with, or as a substitute for other depressants such as heroin and are often taken alternately with amphetamines as they tend to enhance the euphoric effects of amphetamines while calming the nervous states they produce.

	Barbiturates are classed by their clearance time as long-acting, intermediate-acting, short-acting or ultrashort-acting. The ultrashort (Thiopental) are generally used as anesthetics. The most commonly abused are the short-acting agents such as pentobarbital (Nembutal), secobarbital (Seconal), amobarbital (Amytal), and the seco-amobarbital mixture known as Tuinal. In large dosage, they cause severe poisoning, deep comas, respiratory and kidney failure, and death. Slang names include rainbows, blue devils, reds, yellows, yellow jackets, blues, and blue heavens.
Benzodiazepines	A class of drugs used as antianxiety tranquilizers. Some are used to treat muscle spasms, convulsions, and alcohol withdrawal syndrome. The most common side-effects are drowsiness, confusion, and loss of coordination. In combination with alcohol or barbiturates, these effects are addictive. Included in this class are chlordiazepoxide (Librium), diazepam (Valium), oxazepam (Serax), and chlorazepate dipotassium (Tranxene).
Benzoylecgonine	The principal metabolite of cocaine found in urine and used for detection and evidence of cocaine use.
Blind Testing	The practice of submitting urine specimens containing known drugs to determine laboratory accuracy.
Bluing Agent	A chemical used to artificially color toilet tank water blue.
Butabarbital	An intermediate-acting barbiturate used in sedative preparations.
Butalbital	A barbiturate used in various sedative preparations.
Cannabinoids	The constituents of marijuana (cannabis sativa).
Case Management	An individualized plan for securing, coordinating, and monitoring the appropriate treatment interventions and ancillary services for each drug testing offender's successful treatment and justice system outcomes.
Chain of Custody	The policies and procedures that govern collection, handling, storage, transportation, and testing of a urine specimen and dissemination of test results in a manner that ensures that the specimen and the results are correctly matched to the person who donated the specimen and that the specimen is not altered or tampered with from the point of collection through the reporting of test results.
Chromatography	A procedure used to identify substances, such as drugs of abuse in urine, based on separating or extracting the substances, allowing them to move or migrate along a carrier, and then identifying them.
Class of Drugs	A group of drugs with a related chemical structure.
CNS	Central nervous system.
Cocaine	An alkaloid refined from the cocoa plant that acts as a powerful short-acting stimulant, pharmacologically similar to amphetamines. Effects include euphoria, restlessness, excitement, and a feeling of well being. Slang names include coke, flake, star dust, and snow. Freebasing involves heating with either lighter fluid or other solvents.
Codeine	An alkaloid of opium which is extracted from morphine. Codeine's effects resemble those of morphine but with only 1/6 to 1/10 of the analgesic action. Codeine is commonly found in cough medicine and minor prescription pain relievers.
Collection Site	The place where individuals present themselves for the purpose of providing urine specimens to be analyzed for illegal drugs.
Concentration	Amount of a drug in a unit volume of biological fluid, expressed as weight/volume. Urine concentrations are usually expressed either as nanograms per milliliter (ng/ml),

	as micrograms per milliliter (ug/ml), or milligrams per liter (mg/l). (There are 28,000,000 micrograms in an ounce, and 1,000 nanograms in a microgram.)
Confirmation Test	A second test which is used to confirm positive results from an initial screening test. A confirmation test is made by a method more specific than a screening test and provides a greater margin of certainty.
Crack	Freebase form of cocaine (cocaine hydrochloride) that is usually smoked. "Freebase" refers to the absence of inert ingredients used to "cut" cocaine.
Cutoff Level	The concentration of a drug in urine, usually in nanograms per milliliter (ng/ml) used to determine whether a specimen is positive (at or above the cutoff level) or negative (below the cutoff level) for the drug in question.
Drug Abuser	An individual who uses illegal drugs or legal drugs in excess.
Drug Addict	An individual who is unable to discontinue use of drugs despite the negative consequences of that use to him/herself and others.
Drug Screen	Full—testing a specimen for the presence of all categories of drugs.
Drug Screen	Partial—testing a specimen for the presence of only those drugs which were found in a particular individual's initial full drug screen, or are the most prevalently abused drugs in the local area.
Drug Testing	In this document, drug testing refers solely to urinalysis and not to any other form of analysis, such as: blood, hair, saliva, or voice inflections.
Elimination	The process by which drugs and metabolites are removed from the body.
EMIT™	Enzyme Multiplied Immunoassay Technology: Syva's basic immunoassay technology for abused drugs tests whether in the st, Qst, or dau configuration.
Enzyme Immunoassay	An immunoassay (EIA) procedure used to identify drugs of abuse in urine by attaching an enzyme tag to the drug in question.
Exigent Circumstances	Unusual or irregular circumstances requiring urgent and immediate intervention.
External Testing	The testing of urine specimens by professional technologists or technicians at a commercial laboratory located away from probation or parole facilities.
False Negative	Report that drug or metabolite has not been detected when drug or drug metabolite is present in the specimen.
False Positive	Report that drug or metabolite has been detected when drug or drug metabolite is not present in the specimen.
Noninstrument Tests	A portable test requiring no calibration or formal instrumentation of any kind which will sometimes be employed at a location outside of a juvenile probation and parole office or facility such as a jail or an offender's home or place of employment. This methodology can also be used at any office or facility.
FPIA	Fluorescence Polarization Immunoassay is an immunoassay procedure used to identify drugs of abuse in urine by attaching a tag that glows or fluoresces to the drug in question.
Gas Chromatography/ Spectrometry	A chromatographic procedure used to identify mass drugs of abuse in urine using a helium or (GC/MS) nitrogen carrier to move the drug in question to a detector for identification and measurement. The detector, a mass spectrometer, identifies the drug by its mass-to-charge ratio.

Hallucinogens	A major classification of natural and synthetic drugs whose primary effect is to distort the senses; they can produce hallucinations or experiences that depart from reality. Included in this classification are DMT, LSD, MDA, Mescaline, Peyote, PCP, Psilocybin, and STP.
Heroin	A semisynthetic opiate derivative used in a variety of cough and cold preparations. Its abuse potential is between that of codeine and morphine.
HIV	Human Immunodeficiency Virus. The Term "HIV" has been internationally accepted in the scientific community as the appropriate name for the retrovirus that is the causative agent of AIDS. "HIV" replaces the previously used terminology of: HTLV-III (Human T-Lymphotropic Virus Type III) LAV (Lymphadenopathy Associated Virus) ARC (AIDS-Related Complex).
HPTLC	High Performance Thin Layer Chromatography represents a specialized form of TLC which has been developed for drugs that appear in low concentrations in urine.
Hydromorphone	A morphine derivative used as a narcotic or hydrochloride analgesic. Like morphine, it is addictive but is five to ten times more toxic. Sold under the trade names of Dilaudid or Hydromorphone.
Immunoassay	A procedure used to identify substances such as drugs of abuse in urine, based on the competition between tagged and untagged antigen to combine with antibodies. The uncombined, tagged antigen is an indicator of the drug present in the urine specimen.
Laboratory Testing	The testing of urine specimens by professional technologists or technicians at a commercial laboratory.
Local Agency	The organization(s) legally responsible for directing the probation and drug testing program.
Mass Spectrometry	A detection device usually used in conjunction with a Gas Chromatograph (GC/MS) that specifically identifies and quantifies the constituents of complex fluid mixtures.
Metabolism	The action of enzymes to alter a drug chemically and facilitate its removal from the body.
Metabolite	The product of metabolism.
Methadone	An opiod used in the maintenance treatment of heroin dependency because it prevents heroin withdrawal symptoms and fulfills the addict's physical need for the drug.
Methamphetamine	A central nervous system stimulant similar to amphetamine sulfate but more potent. It is a member of the amphetamine class and is preferred by habitual amphetamine users. In IV form, it produces an almost instantaneous onset of the drug's effect. Slang names include meth, speed, and crystal.
Methaqualone	Nonbarbiturate sedative/hypnotic that produces sleep for about 6 to 8 hours. It also produces muscular relaxation, feelings of contentment, and total passivity.
MDA	A synthetic hallucinogen related to both mescaline and amphetamines. Also called MDMA.
Morphine	The principal active ingredient in opium. It is considered by some to be superior to other pain relievers.
Nanogram	One billionth of a gram.

Narcotic	Medically, usually refers to any drug that dulls the senses. It produces a sense of well-being in small doses and causes insensibility, stupefication, and even death in large doses.
Negative Result	Test result indicating a drug is not detected at or above the threshold of a test.
Offender	Any individual placed under institutional or field supervision by a probation department, parole board, or court.
Officer	For the purposes of this document, "officer" refers to both juvenile probation and parole officers.
Onsite Testing	The testing of urine specimens within criminal justice facilities using paraprofessional technicians.
Opiates	A major class of drugs that depress the central nervous system and is used principally to relieve pain. Examples include morphine, heroin, and codeine.
OTC	Over-the-counter drugs available without a prescription.
Oxazepam	A tranquillizer member of the benzodiazepine class.
Oxycodone	A semisynthetic morphine derivative used as a pain reliever. Tradenames include Percodan, Percocet-5, and Tylox.
Oxymorphone	A semisynthetic narcotic analgesic similar to morphine that produces less nausea, constipation, and respiratory depression.
PCP	Phencyclidine. A powerful depressant used illicitly for its hallucinogenic properties. It is most often smoked after being sprinkled on parsley, marijuana or tobacco. Side effects include agitation, irritability, extreme excitation, visual disturbances, and delirium. Slang terms include angel dust, crystal, superweek, rocket fuel, and goon.
Phenmetrazine	A CNS stimulant member of the amphetamine class used to suppress the appetite.
Phentermine	A sympathomimetic amine used in OTC preparations as a vasoconstrictor and bronchodilator usually in combination with an antihistamine drug.
Physiological	A state of adaptation to a drug-accompanied dependence by the development of tolerance.
Pipette	A syringe-like devise used to pick up and dispense a measured amount of a urine specimen.
Policy(ies)	A high level overall plan which embraces the general goals of a drug testing program. Policies provide the theoretical framework for deciding what is or is not an acceptable procedure for an agency's drug testing program.
Positive Result	Drug detected at or above the threshold of a test.
Precision	The ability of a testing method to perform consistently and to be free from external and internal sources of variation.
Presumed Positive	A specimen identified at or above the screening test threshold but not yet subjected to confirmation testing.
Procedure(s)	A series of steps to be performed in a regular definite order under specified conditions.
Psychological Dependence	A mental state involving a drive to repeated or continuous drug use to achieve pleasure or satisfaction and to avoid discomfort.
Qualitative	Chemical analysis to identify the components of a mixture.

Quality Assurance	Planned, systematic activities, both operational and organizational, that ensure a testing system routinely produces reliable results.
Quality Control	The routine operational procedures that a laboratory institutes to ensure that its results are continually reliable.
Quantitative	Chemical analysis to determine the amounts of proportions of a mixture.
Random Sampling (Collection)	Obtaining juvenile urine specimens for testing without the juvenile's prior knowledge of when a specimen will be requested. This means unscheduled testing and should not be confused with the classic research design definition.
Reagent	A substance that takes part in a chemical reaction.
RIA	Radioimmunoassay is an immunoassay procedure used to identify drugs of abuse in urine by attaching a radioactive tag to the drug in question.
Safety Zone	The area of difference between the minimum sensitivity of an assay and the threshold.
Schedule Collection	Obtaining juvenile urine specimens for testing according to an established schedule.
Screening Test	An initial test which is used to detect drugs of abuse in urine. Screening tests are less expensive and not as accurate as confirmation tests.
Sensitivity	The ability of a procedure to detect minute amounts of substances. This describes the lower limit of detection of a drug testing method and is expressed in concentration units. A sensitive procedure will rarely fail to detect a substance if it is present, thus few false negative results will occur.
Secobarbital	A short-acting barbiturate.
Specificity	The ability of a procedure to react only with the drugs or metabolites being tested and to exclude other substances. A specific procedure is rarely positive if a substance is truly absent, thus few false positive results will occur.
Test Site	A laboratory or other such place designated by the agency where the juvenile's urine specimens are analyzed for the presence of illegal drugs.
THC	Tetrahydrocannabinol: the primary psychoactive compound present in marijuana.
Threshold	A defined urine, drug, or metabolite concentration; a value at or above indicates a positive result, and a value below indicates a negative result. Also called the "cutoff."
TLC	Thin layer chromatography (TLC) is a chromatographic procedure used to identify drugs of abuse in urine using a thin layer of material such as silicon as a carrier. The separated substances are dyed, and the resultant color and migration patterns are used to identify the drugs in question.
Tolerance	A physiologic state in which there is a need to progressively increase drug dosage to produce the effect originally achieved by a smaller dose.
Turnaround Time	The amount of time that elapses between receipt of a urine specimen and the availability of test results.
Urinalysis	The chemical analysis of urine to determine the presence or absence of substances. In the criminal justice setting, the substances being determined are drugs of abuse.
Withdrawal Syndrome	Unpleasant physiologic changes that occur when the drug is discontinued abruptly or when its effect is counteracted by a specific agent like a drug antagonist.

Sources Used for Glossary

Black, David L., Ph.D., ***CURRENT ISSUES IN DRUG DETECTION***, Abbott Diagnostics Educational Services, 1988.

Bureau of Justice Assistance, ***URINALYSIS AS PART OF TREATMENT ALTERNATIVES TO STREET CRIME (TASC) PROGRAM***, Washington, D.C., July 1988.

National Institute on Drug Abuse, ***URINE TESTING FOR DRUGS OF ABUSE***, Research Monograph 73, Rockville, Maryland, 1986.

REFERENCES

CODE OF FEDERAL REGULATIONS, Part 2-Confidentiality of Alcohol and Drug Abuse Patient Records, February 1989.

Friedman, Alfred S. and Beschner, George M., ed., ***TREATMENT SERVICES FOR ADOLESCENT SUBSTANCE ABUSERS***, National Institute on Drug Abuse, 218, 1987, pp. 1-10.

MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS, Federal Register, Vol. 53, No. 69, Monday, April 11, 1988.

National Institute on Drug Abuse, ***URINE TESTING FOR DRUGS OF ABUSE***, Research Monograph 73, Rockville, Maryland, 1986.

Roberts, Albert R., ***JUVENILE JUSTICE: POLICIES, PROGRAMS, AND SERVICES***, Dorsey Press, 1989.

Springer, Charles E., ***JUSTICE FOR JUVENILES***, U.S. Department of Justice, 1987, p. 29.

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, July 24/31, 1987, pp. 506-507.

SELECTED READINGS

Bureau of Justice Assistance, ***TREATMENT ALTERNATIVES TO STREET CRIME TASC PROGRAMS,*** Washington, D.C., 1988.

Bureau of Justice Assistance, ***ESTIMATING THE COSTS OF DRUG TESTING FOR A PRETRIAL SERVICES PROGRAM,*** Washington, D.C., 1989.

Bureau of Justice Assistance, ***URINALYSIS AS PART OF TREATMENT ALTERNATIVES TO STREET CRIME (TASC) PROGRAM,*** Washington, D.C., 1988.

Carver, John A., ***DRUGS AND CRIME: CONTROLLING USE AND REDUCING RISK THROUGH TESTING,*** NIJ Reports SNI: 199, September/October 1986.

Chang, Joyce C. In Charles L. Renfroe (Ed.), "PharmChem Newsletter", ***DRUG TESTING AND INTERPRETATION OF RESULTS,*** Vol. 16, No.1, May 1987.

CODE OF FEDERAL REGULATIONS, Part 2-Confidentiality of Alcohol and Drug Abuse Patient Records, February 1989.

Commission on Accreditation for Corrections, ***MANUAL OF STANDARDS FOR ADULT PROBATION AND PAROLE FIELD SERVICES,*** Rockville, Maryland, 1977.

Cone, E.J., Menchen, S.L., Paul, L.D., and Mitchell, J., ***VALIDITY TESTING OF COMMERCIAL URINE COCAINE METABOLITE ASSAYS: I. ASSAY DETECTION TIMES, INDIVIDUAL EXCRETION PATTERNS, AND KINETICS AFTER COCAINE ADMINISTRATION TO HUMANS,*** Journal of Forensic Sciences, JFSCA, Vol. 34, No. 1, January 1989, pp. 15–31.

Cone, E.J., Menchen, S.L., Paul, L.D., and Mitchell, J., ***VALIDITY TESTING OF COMMERCIAL URINE COCAINE METABOLITE ASSAYS: II. SENSITIVITY, SPECIFICITY, ACCURACY, AND CONFIRMATION BY GAS CHROMATOGRAPHY/MASS SPECTROMETRY,*** Journal of Forensic Sciences, JFSCA, Vol. 34, No. 1, January 1989, pp. 32–45.

Cone, E.J., Menchen, S.L., Paul, L.D., and Mitchell, J., ***VALIDITY TESTING OF COMMERCIAL URINE COCAINE METABOLITE ASSAYS: III. EVALUATION OF AN ENZYME-LINKED IMMUNOSORBENT ASSAY (ELISA) FOR DETECTION OF COCAINE AND COCAINE METABOLITE,*** Journal of Forensic Sciences, JFSCA, Vol. 34, No. 4, January 1989, pp. 991-995.

del Carmen, Rolando V. and Sorenson, Jonathan R., ***LEGAL ISSUES IN DRUG TESTING PROBATION AND PAROLE CLIENTS AND EMPLOYEES,*** U.S. Department of Justice, National Institute of Corrections, August 1988, Correctional Law Reporter, Volume I., No.4, ISSN #1043-6776, October 1989.

Eisner, Robin, ***THE CHALLENGE AFTER CERTIFICATION,*** Diagnostics & Clinical Testing, Vol. 27, September 1989.

Golden, C.A., ***ONSITE SCREENING FOR DRUGS OF ABUSE,*** The NARC Officer, February 1990.

Graham, Mary G., ***CONTROLLING DRUG ABUSE AND CRIME: A RESEARCH UPDATE,*** NIJ Reports, SNI 202, March/April 1987.

Haber, Meryl H., ***QUALITY ASSURANCE IN URINALYSIS,*** Clinics Laboratory Medicine, Vol. 8, No.3, September 1988.

Irving, John Cmdr., USN. ***DRUG TESTING IN THE MILITARY—TECHNICAL AND LEGAL PROBLEMS,*** Clinical Chemistry, Vol. 34, No. 3, 1988.

de Kanel, J., Dunlap, L., and Hall, T.D., ***EXTENDING THE DETECTION OF THE TDx FLUORESCENCE POLARIZATION IMMUNOASSAY FOR BENZOYLECGONINE IN URINE,*** Clinical Chemistry, Vol. 35, No. 10, 1989.

MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS, Federal Register, Vol. 53, No. 69, Monday, April 11, 1988.

National Institute on Drug Abuse, ***URINE TESTING FOR DRUGS OF ABUSE***, Research Monograph 73, Rockville, Maryland, 1986.

Science Observer, ***DRUG TESTING: THE STATE OF THE ART***, January-February, 1989, pp. 19–22.

Simon, V.J., and Mobley, R.C., ***PHYSICIANS OFFICE LABORATORIES AND THE CLINICAL LABORATORY IMPROVEMENT AMENDMENTS OF 1988***, Diagnostics & Clinical Testing, Vol. 27, September 1989.

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, July 24/31, 1987, pp. 506–507.

The Standards Manual of the Law Enforcement Agency Accreditation Program, ***STANDARDS FOR LAW ENFORCEMENT AGENCIES***, Fairfax, Virginia, 1984.

Well, D.J., and Barnhill, M.T., Jr., ***COMPARATIVE RESULTS WITH FIVE CANNABINOID IMMUNOASSAY SYSTEMS AT THE SCREENING THRESHOLD OF 100 ug/L***, Clinical Chemistry, Vol. 35, No. 11, 1989.

Wish, Eric D., ***DRUG TESTING***, National Institute of Justice, CRIME FILE Study Guide, Washington, D.C.

Wish, Eric D., ***DRUG USE FORECASTING: NEW YORK 1984 TO 1986***, National Institute of Justice, Research in Action, Washington, D.C., 1987.

148

☆ U.S. GOVERNMENT PRINTING OFFICE: 1992 — 312-341/ 64411

U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

Washington, D.C. 20531

Official Business
Penalty for Private Use $300

BULK RATE
POSTAGE & FEES PAID
DOJ/OJJDP
Permit No. G-91